

**INVITATION FOR BID (MULTI-STEP)**

**DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES  
NEW BUILDING STRUCTURE  
FOR  
GROUP HOME FOR FOSTER CARE CHILDREN  
(DESIGN-BUILD)**

**PROJECT No.: 470-5-1070-F-BAR**

**Funded By: DOI OIA Compact Impact-Grant No.  
Guam-CI-2015-1, D15AF00038**

**EDDIE BAZA CALVO  
Governor of Guam**

**PREPARED BY:**



**DIVISION OF CAPITAL IMPROVEMENT PROJECTS  
CONTRACTS ADMINISTRATION SECTION  
DEPARTMENT OF PUBLIC WORKS  
GOVERNMENT OF GUAM**

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2017

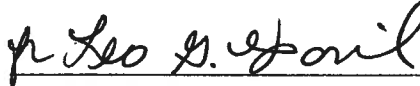
RECOMMEND BY:

  
JOHN F. CALANAYAN

Engineer in Charge  
Department of Public Works

Date: 3/2/17

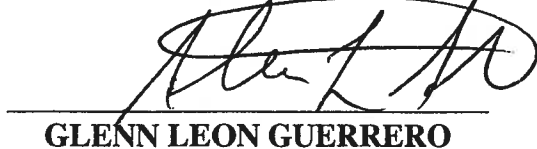
APPROVED BY:

  
JAMES GILLAN

Director  
Dept. of Public Health & Social Services

Date: 3/2/17

APPROVED BY:

  
GLENN LEON GUERRERO

Director  
Department of Public Works

Date: 3/2/17

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The Honorable  
**EDDIE BAZA CALVO**  
Governor

The Honorable  
**RAY TENORIO**  
Lt. Governor



**GLENN LEON GUERRERO**

Director

**FELIX C. BENAVENTE**

Deputy Director

## **INVITATION FOR BID (Multi-Step)**

The Governor of Guam, Eddie Baza Calvo, through the Director of the Department of Public Works is soliciting Multi-Step bids for **"Department Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build)"**, Submittal of separate sealed envelopes of **Unpriced Technical Offer** with One (1) original and Five (5) copies and **Priced Bid** with One (1) original and One (1) copy, must be submitted at the same time in a separate labeled envelop at Contracts Administration and Technical Services Section, Division of Capital Improvement Projects, Ground Floor, Building "B", Department of Public Works, Government of Guam, **no later than (4:00 P.M.) March 27, 2017.**

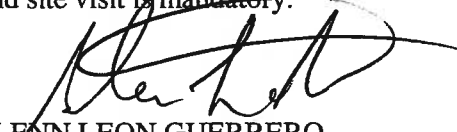
The contract time is Two Hundred Ten (270) **calendar days**. All bids must be accompanied by a bid Security, in the amount of 15% of the total bid amount. Acceptable forms of bid security may be a bid bond, certified check or cashiers check made payable to the Treasurer of Guam.

A non-refundable amount of \$50.00 is required as payment for bid documents, which can be obtained from Contract Section commencing **on March 03, 2017**. A receipt payment of non-refundable fee in cash, cashier's check or certified check payable to the Treasure of Guam and should be presented when applying for the bid documents.

This Invitation for Bid (IFB) Multi-Step can also be downloaded at [www.dpw.guam.gov](http://www.dpw.guam.gov) and is available for public inspection at DPW's Contracts Administration Technical Services Office located at 542 North Marine Corps Drive, Upper Tumon, Guam 96913, Monday through Friday, excluding holidays, between 8:00 a.m. to 5:00 p.m. Upon obtaining this IFB Multi-Step a Fifty U.S. Dollars (\$50.00) non-refundable fee is to be paid prior to submission of sealed bid. No bid will be entertained if the fee has not been paid, prospective bidders must complete the Acknowledgement of Receipt Form attached to this IFB Multi-Step and return the completed form to DPW in order to receive any addenda or other notices related to this IFB Multi-Step. (5GCA 5220 (b))

The Department of Public Works hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color and national origin in consideration for an award. The right is reserved to reject any or all bids and to waive any imperfection in the bids in the interest of the Government of Guam

A pre-bid conference will be held **on March 10, 2017, 10:00 A.M.** at the Division of Capital Improvement Projects, Chief of Engineer's Conference Room, 2nd Floor, Building "B", Department of Public Works. A site investigation on the proposed project will be conducted immediately after the pre-bid conference to allow prospective bidders to familiarize themselves with the project's site conditions. Attendance for the pre-bid conference and site visit is mandatory.



**GLENN LEON GUERRERO**

IFB-1

## **I. GENERAL:**

### **a). Overview.**

The Governor of Guam through the Guam Department of Public Works and the Procurement Officer of this project (hereinafter referred to as “DPW”, “Government” and “Owner”) on behalf of the Department of Public Health and Social Services (hereinafter referred to as “DPHSS”) is soliciting Unpriced Technical Offers and Priced Bids (hereinafter collectively referred to as “Bid(s)”) for the design and construction of a New Building Structure for a Group Home For Foster Care Children (hereinafter referred to as “the Project”). The Project is federally funded through a Department of Interior (DOI), Office of Insular Affairs (OIA), Compact Impact-Grant No. Guam CI-2015-1, D15AF00038 to DPHSS.

### **b) Invitation for Bid.**

Multi-Step Procurement. This Invitation for Bid (hereinafter called “IFB”) is a multi-step procurement issued in accordance with 5 GCA §5211(h) and 2 GAR Division 4 §3109(r). Multi-Step sealed bidding is a two-phase process consisting of a technical first phase (hereinafter referred to as “Phase I”) composed of one or more steps in which bidders submit Unpriced Technical Offers to be evaluated, and a second phase (hereinafter referred to as “Phase II”) in which those bidders whose technical offers are deemed to be acceptable during the Phase I have their Price Bids considered. It is designed to obtain the benefits of competitively sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of Unpriced Technical Offers and the conduct of discussions to evaluate and determine the acceptability of Unpriced Technical Offers.

#### **(b) (1) Availability.**

This IFB is available for download from DPW’s website at [www.dpw.guam.gov](http://www.dpw.guam.gov) and public inspection at DPW’s office located at 542 North Marine Corps Drive, Upper Tumon, Guam 96913, Monday through Friday, excluding holidays, between 8:00 a.m. and 5:00 p.m. A copy of the IFB may be picked up at the DPW office or mailed or e-mailed to a prospective bidders by DPW upon receipt of payment of a non-refundable fee of Fifty U.S. Dollars (\$50.00) payable in cash, or by cashier’s or certified check payable to the Treasurer of Guam / DPW. Upon obtaining this IFB, prospective bidders must complete the Acknowledgement of Receipt Form set forth as a single point of contact (see **Attachment -A15**) to this IFB and return the completed form to DPW in order to receive any addenda or other notices related to this IFB (5GCA 5220 (b)). Failure by prospective bidders to submit the Acknowledgement of Receipt Form to DPW may result in the prospective bidder not receiving notices from DPW regarding this IFB, including addenda, point deductions during the proposal evaluation process, or proposals may be deemed non-

responsive.

**(b) (2). Bids.**

Bids must be in writing and signed in ink.

Unpriced Technical Offer. Bidders must submit their Unpriced Technical Offer clearly marked as such, one (1) as "ORIGINAL" and five (5) copies must be submitted to DPW shall be placed in a separate sealed envelope addressed to the Director of Public Works and clearly labeled with the IFB Project Number, IFB Project Title and Proposal Due Date. The original should be unbound and each hard copy must be separately bound. Erasures or other changes in a proposal must be explained or noted over the signature of the bidders. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the IFB, or irregularities of any kind may be rejected by DPW as being non-compliant.

Priced Bids. Bidders are also at the same time must submit their Price Bid clearly marked as such, one (1) as "Original and one (1) copy, and shall be placed in a separate sealed envelope from the Unpriced Technical Offer. Price Bids shall be made on the forms furnished by DPW and shall be enclosed in a sealed envelope addressed to the Director of Public Works, Government of Guam, 542 North Marine Drive, Tamuning, Guam 96913 and endorsed with the name of the bidders and the title "**Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build), Project no.: 470-5-1070-F-BAR**".

Attention is called to the fact that bidders not only bid to assume the obligations and liabilities imposed upon the Contractor in the form of contract, but expressly make certain of the representations and warrants made therein. No effort is made to emphasize any particular provision of the contract, but bidders must familiarize themselves with every provision and its effect.

**(b)(3) Amendments to the IFB.**

Amendments. DPW reserves all rights to revise or amend this IFB prior to the date set for opening. Such revisions and amendments, if any, will be announced by an amendment or amendments to this IFB shall be identified as such. The amendment shall refer the portions of the IFB it amends. Amendments and addenda shall be sent to all prospective bidders who have submitted the Acknowledgement of Receipt Form to DPW and shall also be made available on DPW's website. All offerors/bidders must acknowledge receipt of amendments or addenda issued.

**(b)(4) Cancellation of Solicitations: Rejection of All Bids or Proposals.**

DPW reserves all rights to cancel the solicitation and reject all bids and all proposals in

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New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

whole or in part when in the best interests of the Government as set forth in 2 GAR Division 4 §3115.

**(b)(5) Schedule of Events.**

SCHEDULE	
EVENT	DATE
IFB Issue Date	March 3, 2017
Pre-Bid Conference & Site Visit	March 10, 2017 @ 10:00 A.M.
Deadline for Receipt of Written Question	March 14, 2017 @ 4:00 P.M.
DPW Issuance of Answers to Written Question	March 17, 2017 @ 5:00 P.M.
Unpriced Technical Offer & Priced Bid Due Date	March 27, 2017 @ 4:00 P.M.

**(b)(6) Pre-Bid Conferences.**

Pre-Bid conferences & site visit(s) will be permitted prior to the date established herein for submission of Bid(s). The conferences & site visit(s) will be conducted only to explain the procurement requirements for this IFB. The Authority will notify all bidders of any substantive clarification provided in response to any inquiry. The Authority will extend the due date if such information significantly amends the solicitation or makes compliance with the original proposed due date impractical. This Pre-Bid Conference and Site Visit is "***Mandatory***". This means the interested proposers or bidders must have a representative in attendance on the date and time of the Pre-Bid Conference in order to satisfy one (1) of the IFB's requirements in determining 'responsibility' towards being a Qualified Bidder. A Proposer or bidder will be disqualified if they did not attend the *Mandatory Pre-Bid Conference*. It is not necessary to purchase the IFB packet before attending the Mandatory Pre-Bid Conference. Purchase of the IFB packet is necessary only when submitting a Bid (Unpriced Technical Offer and Priced Bid contained within a separately sealed envelope offer) on or before the deadline for bid submissions.

**(b)(7) No Late Bids.**

Bid(s) must be received at the receptionist's desk of DPW by the Bid Due Date set forth in this IFB. Email or facsimile bids will not be accepted. Regardless of cause, late bids will not be accepted and will automatically be disqualified from further consideration. It shall be the bidder's sole risk to assure delivery at the receptionist's desk at the designated office by the designated time. Late Bids will not be opened and may be returned to the bidder at the expense of the bidders or destroyed if requested.

**(b)(8) DPW Not Responsible for Preparation Costs.**

The costs for developing and delivering bids in response to this IFB and any subsequent presentations of the proposal as requested by DPW shall be at the sole cost and expense of

the bidder. DPW is not liable for any expense incurred by the bidder in the preparation, delivery, and/or presentation of its Bid or any other costs incurred by the bidder.

**(b)(9) All Timely Submitted Materials Become the Property of DPW.**

All materials submitted in response to this IFB become the property of DPW and shall be appended to any formal documentation, which would further define or expand any contractual/lease relationship between the Government of Guam and the bidder resulting from this IFB process.

**(b)(10) Rejection of Bids.**

Any Bid submitted in response to this IFB may be rejected in whole or in part when it is in the best interests of DPW or the government of Guam in accordance with Guam Procurement Regulations § 3115(e).

**(b)(11) Licensing**

Bidders are required to present Business License issued by Department of Revenue and Taxation, and a copy of current Certificate of Authorization (COA) to contract for architectural or engineering services issued by the Guam Board of Registration for Professional Engineers, Architects, and Land Surveyors and or Contractor's License.

**(b)(12) Conflicts of Interest.**

The Bid shall also indicate any current or historical engagement or relationship with any public or private party that could potentially create a conflict of interest with DPW, the Government of Guam or any of its agencies or instrumentalities.

**(b)(13) Primary Point of Contact.**

Identify the overall project coordinator or manager who will serve as the single point of contact for this procurement and liaison between the DPW and the bidder for all work under this procurement. For DPW contact information for single point of contact is as follow:

John F. Calanayan  
CIP Engineer in Charge  
542 North Marine Corps Drive  
Tamuning, Guam 96913  
Email: [john.calanayan@dpw.guam.gov](mailto:john.calanayan@dpw.guam.gov)  
Phone Number: (671) 646-3189  
Fax Number (671) 649-7867

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All communication shall be hard copy to be submitted to Department of Public Works, Government of Guam, 542 North Marine Drive, Tamuning, Guam 96913, Building "B" CIP Contract Section or Fax or Emailed to DPW single point of contact.

## **II. TIME OF COMPLETION**

The Contractor shall commence work on the date specified in the Notice to Proceed. The project shall be completed within Two Hundred Ten (270) calendar days complete and ready for use. In the event the Contractor does not complete the work within the time specified, liquidated damages will be assessed as stated in Section 5 of the Special Provisions.

## **III. PLANS AND SPECIFICATIONS**

This invitation for bids consists of the following documents:

- a) Bid Invitation Documents
  - 1. Invitation to Bid
  - 2. Instructions to Bidders
- b) Bid Submittal Documents
  - 1. Unpriced Technical Offer
  - 2. Bid Form
  - 3. Bid Bond
  - 4. Major Shareholders Disclosure Affidavit
  - 5. Non-Collusion Affidavit
  - 6. Affidavit Re No Gratuities or Kickbacks
  - 7. Affidavit Re Ethical Standards
  - 8. Affidavit Re Contingent Fees
  - 9. Declaration Re Compliance with U.S. DOL Wage Determination
  - 10. Federal Certification re Debarment,
  - 11. Federal Certification Lobbying,
  - 12. Federal Certification Non-Segregated Facilities,
  - 13. Federal Certification Non-Discrimination,
  - 14. Federal Civil Rights
  - 15. Federal Compliance with Federal Financial Accountability Transparency Act
  - 16. Federal Limited English Proficiency
  - 17. Federal Contract Clauses
- c) Contract Documents

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Group Home for Foster Care Children (Design-Build)  
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1. Formal Contract
2. Special Provisions
3. General Conditions
4. General Statement of Work
5. Prevailing Wage Rates
6. Plans
7. Submit current Contractors License issued by Guam Contractors Licensing Board

#### **IV. MULTI-STEP PROCUREMENT REQUIREMENTS:**

**Bidders are required to submit at the same time in separate sealed envelopes. The following;**

1. **Phase I: Unpriced Technical Offer:** Offers submitted by bidders be evaluated solely in accordance with the criteria set forth in the Invitation for Bids, and be categorized as acceptable, potentially acceptable, that is reasonably susceptible of being acceptable, and unacceptable. 2GAR, Division 4, § 3109(t) (4).
2. **Phase II: Price Bid: to be submitted at the same time with Unpriced Technical Offers:** all bidders whose technical offers are determined to be acceptable during the first phase have their Priced Bids considered, opened and evaluated.

**Price Bid** associated with the design and construction of DPHSS New Building Structure for Group Home for Foster Care Children as stated in this IFB must be submitted together with the Bid Bond (**ATTACHMENT, Bid Bond Form**) at the same time in a sealed envelope.

**Price Bid** will not be opened and evaluated during Phase I but will be a part of the evaluation as a whole in determining the responsibility and responsiveness of the Offeror. DPW will pre-qualify all offerors according to the Evaluation Criteria contained in this IFB. Once a determination of the qualified offerors is made, then and only then will the Submitted Sealed Bids be opened and evaluated. ALL SEALED BIDS from un-qualified offerors will be RETURNED, UN-OPENED to the respective offerors.

This process of procurement is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time, obtain the benefits of the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of the technical offers.

## **V. UNPRICED TECHNICAL OFFER REQUIREMENTS:**

Bidders submitting bids in response to this IFB shall present satisfactory evidence that bidder or bidder's company has sufficient experience and that bidder or bidder's company is fully prepared with necessary capital, material, machinery and skilled workmen and supervision staff to satisfactorily complete the Project.

Accordingly, the offeror must submit for review the following information. While all information submitted will remain confidential, DPW reserves the right to investigate the information submitted, as is deemed necessary, before a Contract is awarded, and to disqualify any bidder if deemed to be in DPW's best interest.

Bidders must include in their Phase I sealed bid envelope a description of each of the following:

- a. Cover letter (must be on the bidder/offeror's letterhead)
  - i. Point of Contact. The individual executing the letter shall be identified by name and position and shall be authorized to bind the bidder/offeror contractually.
  - ii. Contract Information. Include the bidder/offeror's name, address, telephone, and facsimile numbers, and email address. Also include the bidder/offeror's principal place of business.
- b. Confirmation Statement. A point-by-point response to all numbered sections, subsections, and attachments to the IFB is required. If no explanation or clarification is required in the bidder/offeror's response to specific subsection, the bidder/offeror shall so indicate on the point-by-point response or utilize a blanket response for the entire section with the following statement: "*Bidder/offeror's name* understands and will comply."
- c. Key Personnel. Complete list of proposed project team, including design consultant(s) and major subcontractors and suppliers. Provide the name(s), education, qualifications, experience, and the role of each key personnel assigned to perform the services under this IFB. Present an organizational chart identifying the relationships and duties of both the corporate staff and all proposed management and staff to be assigned to assist with the services under this IFB. At a minimum, if the bidder is an individual, the offer should include a complete resume of the individual. If the Offeror is a firm, the offer should include a resume of all the individuals who will be working on any aspect of the project.

- d. Experience of Bidder/offeror. The Project Manager will be the primary point of contact for the services provided under the contract. The proposed Project Manager shall be subject to approval by DPW. The Project Manager shall possess the following qualifications: hands-on management skills, strong leadership skills, great interpersonal skills, demonstrated full-time experience as a project manager on similar projects or on projects of \$500,000 or more; demonstrated technical competency on construction techniques, superb aptitude for teamwork; ability to manage multi-disciplinary teams; outstanding communication skills, oral and written, excellent organizational skills, excellent record keeping ability; demonstrated ability to adhere to project budget, demonstrated ability to adhere to project schedule.
  - i. Identify the proposed Project Manager
  - ii. Provide his/her resume and describe his/her qualifications.
- e. Critical Path Method (CPM) baseline design and construction schedule.
- f. Bidder's past performance in accomplishing projects in agreed time including an explanation of any failure to complete within the specified timeframe.
- g. Availability of plant, machinery and other equipment necessary for work including any machinery or equipment that bidder might have to purchase to complete the Project.
- h. Quality of work presently performed for Government of Guam, federal, and private projects.
- i. Bidder's diligence in carrying out responsibility.
- j. Record of good owner-contractor relationship.
- k. Previous record of bid qualifications.
- l. Qualifications of supervisory personnel proposed to work on this Project and identification of their education, skills, and past experiences.
- m. Record of past performance of contracts including record of default and nonpayment of obligations.
- n. Disclosure of financial resources sufficient to demonstrate an ability to complete this Project.

## **VI. DISCUSSIONS:**

The Government to the extent that Director of DPW finds necessary may conduct oral or written discussions with the Unpriced Technical Offers as set forth in 2 GAR Division 4 §3109(t)(1) (e).

## **VII. TRADE SECRETS OR OTHER PROPRIETARY DATA:**

Bidders may designate those portions of the Unpriced Technical Offer which contain trade secrets or other proprietary data which are to remain confidential as set forth in 2 GAR Division 4 §3109 (t)(1)(f).

DPW shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of such offeror to determine the validity of such requests. If the parties do not agree as to the disclosure of data, DPW shall inform the offeror in writing what portions of the Unpriced Technical Offer will be disclosed and that unless the offeror protests under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations, the offer will be so disclosed. Such Unpriced Technical Offer shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data and Unpriced Technical Offers of Bidders who are not awarded the contract shall not be opened to public inspection unless DPW determines in writing that public inspection of such offers is essential to assure confidence in the integrity of the procurement process; provided however, that the provisions of Subsection 3109(v)(2)(c) of this § shall apply with respect to possible disclosure of trade secrets and proprietary data.

## **VIII. DESIGN BUILD CONSTRUCTION SERVICES:**

The design and construction services including but not limited to Architectural, Civil, Structural, Electrical, Mechanical plus all other disciplines needed in accomplishing the requirements stated in this IFB shall be furnished generally in accordance with bidders Unpriced Technical Offers as set forth in 2 GAR Division 4 §3109(t)(1)(g).

## **IX. AMENDMENTS AFTER RECEIPT OF UNPRICED TECHNICAL OFFERS:**

After receipt of the Unpriced Technical Offers, amendments to the IFB shall be distributed only to bidders who submitted Unpriced Technical Offers, and they shall be permitted to submit new Unpriced Technical Offers or to amend those submitted. If, in the opinion of the Director of DPW, a contemplated amendment will significantly change the nature of the procurement, the IFB, shall be cancelled in accordance with 2 GAR Division 4 §3115, and a new IFB issued.

## **X. RECEIPT AND HANDLING OF UNPRICED TECHNICAL OFFERS:**

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Unpriced Technical Offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing in accordance with 2 GAR Division 4 §3109(t)(3).

## **XI. EVALUATION OF UNPRICED TECHNICAL OFFERS:**

The unpriced technical offers submitted by offerors shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

- a) Acceptable (700 to 1000 total points);
- b) Potentially acceptable; that is, reasonably susceptible of being made acceptable (500 to 699 total points) ;or
- c) Unacceptable. (499 total points and below). The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make part of the procurement file.

DPW may initiate Phase Two of the procedure if, in the Procurement's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If DPW finds that such is not the case, DPW shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection 3109(t)(5).

## **XII. DISCUSSIONS OF UNPRICED TECHNICAL OFFERS**

DPW may conduct discussions with any offeror who submits an acceptable or potentially acceptable Unpriced Technical Offer. During the course of such discussions, DPW shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any offeror who has not been notified that its offer has been finally found potentially acceptable may submit supplemental information amending its technical offer at any time until the closing date established by DPW. Such submission may be made at the request of the DPW or upon the bidder's own initiative. See 2 GAR Division 4 §3109(t) (5).

## **XIII. NOTICE OF UNACCEPTABLE UNPRICED TECHNICAL OFFER**

When the DPW determines a bidder's Unpriced Technical Offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer. See 2 GAR Division 4 §3109(t) (6).

#### **XIV. MODIFICATION OR WITHDRAWAL OF BIDS.**

Mistakes in unpriced technical Bid may be modified or withdrawn during Phase I at any time. During Phase II mistakes in price may be corrected or withdrawn in accordance with 2 GAR Division 4 §3109(m). See 2 GAR Division 4 §3109 (u).

#### **XV. PROCEDURES FOR PHASE II:**

##### **INITIATION:**

Upon the completion of Phase I, in compliance with 2 GAR Division 4, §3109(v) (1) the Procurement Officer shall either:

- (a) open Priced Bids submitted in Phase One from bidders whose Unpriced Technical Offers were found to be acceptable; or
- (b) If Priced Bids have not been submitted, technical discussions held or amendments to the IFB have issued, invite each acceptable bidder to submit a Price Bid.

##### **CONDUCT OF PHASE II:**

Phase II shall be conducted as any other competitive sealed bid procurement except:

- (a) As specifically set forth in 2 GAR Division 4, §3109(r) through (v) (2).
- (b) No public notice need be given of this IFB to submit Priced Bids because such notice was previously given;
- (c) After award the Unpriced Technical Offer of the successful bidder shall be disclosed as follows: The Procurement Officer shall examine the written requests of confidentiality for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of such requests. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidder what portions of the Unpriced Technical Offer will be disclosed and that unless the offeror protests under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations, the offer will be so disclosed. Such Unpriced Technical Offer shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data and
- (d) Unpriced Technical Offers of Bidders who are not awarded the contract shall not be opened to public inspection unless DPW determines in writing that public inspection of such offers is essential to assure confidence in the integrity of the procurement process; provided however, that the provisions of Subsection 3109(v)(2)(c) of this § shall apply with respect to possible disclosure of trade secrets and proprietary data

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Department of Public Health and Social Services  
New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

## **XVII. PRICE BID REQUIREMENTS:**

The Priced Bid shall include all cost associated with the development of Plans, Specifications & Estimates and Construction of New Building Structure for Group Home For Foster Care Children complete and ready for use, conforms to the latest federal and local building codes. DPW requires that all Offerors include a Bid Bond of not less than 15% of the Total Bid Amount as a requirement of this IFB. The Bid Bond shall be enclosed in the SEALED BID envelope and will be considered as a companion document of the Priced Bid.

### **PREPARATION OF PRICE BID:**

The bidder must submit his Bid on the forms furnished by DPW. All blank spaces in the bid forms must be correctly filled in where indicated and the bidder must state the prices in words and numerals for which he proposes to do each item of the work contemplated or furnish each item of the materials required. In case of conflict between words and numerals, the words, unless obviously incorrect will govern.

The bidder shall sign his Bid in the blank space provided therefore. If this Bid is made by a partnership or corporation, the name and address of the partnership or corporation shall be shown, together with the names and addresses of the partners or officers. If the Bid is made by a partnership, it must be acknowledged by one of the partners, if made by a corporation by one of the authorized officers thereof.

### **BID SECURITY:**

Each offer must be accompanied by a deposit in the amount of not less than fifteen percent (15%) of the total Bid price for which award can be made. Such deposit may be in the form of a Bid bond, cashier's check or certified check made payable to the Treasurer of Guam. Should the successful bidder fail or refuse to execute and deliver the contract and performance and payment bonds required within fifteen (15) calendar days after acceptance of his Bid by the Government, he shall forfeit to the Government of Guam as liquidated damages for such failure or refusal the security deposited with his Bid.

## **XVIII. RIGHT TO ACCEPT AND REJECT BIDS:**

The Government of Guam reserves the unqualified right, in its sole and absolute discretion, to reject any and all Bids, or to accept that Bids or combination of Bids, if any, which in its sole and absolute judgment will under all circumstances best serve the Government's interests, or to reject the Bid of a bidder that is not in a position to perform the contract.

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## **XIX. AUTHORITY:**

This Invitation for Bid (IFB) solicitation is issued subject to all the provisions of the Guam Procurement Act. The IFB requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith.

## **XX. COMPETENCY OF BIDDERS:**

The Government may require bidders to present satisfactory evidence that he has sufficient experience and he is fully prepared with necessary capital, material, machinery and skilled workmen and supervision staff to carry out the contract satisfactorily.

Accordingly, the Contractor must submit for review the following statements upon request:

- a) Experience on similar work.
- b) Past performance of firm in accomplishing government projects in agreed time.
- c) Availability of plant, machinery and other equipment necessary for work.
- d) Quality of work presently performed for Government of Guam or other agencies.
- e) Contractor's diligence in carrying out responsibility.
- f) Record of good owner-contractor relationship.
- g) Previous record of bidder's qualification.
- h) Quality of supervisory personnel and areas of their performance.
- i) Record of past performance of government contracts including record of default and nonpayment of obligations.
- j) Possession of Government of Guam appropriate contractor's license.
- k) Financial resources.

Financial resources report shall be dated not more than six (6) months prior to Bid opening, must be prepared by a certified accountant and shall contain at least the following information:

- 1) Total Assets
- 2) Total Liabilities
- 3) Total Current Assets
- 4) Total Current Liabilities
- 5) Bonding Capability

Any bidder who at the time of bidding is determined liable to pay liquidated damages for delay in completion of the last two works contracted from the Government of Guam will be automatically rejected.

## **XXI. MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS:**

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The right is reserved, as the interest of the Government may require, to revise the specifications or drawings or both prior to the date set for opening bids. Such revisions, if any, will be announced by an addendum or addenda to this invitation for Bid. If the addenda are of a nature which requires material changes in quantities or prices to be Bid or both, the date set for opening bids may be postponed by such number of days as in the opinion of the issuing officer will enable bidders to revise their Bids. In such cases, the addendum will include an announcement of the new date for opening Bids.

## **XXII. ACCESS TO RECORDS AND OTHER REVIEW:**

The Contractor, including its subcontractors, if any, shall maintain books, documents, papers, accounting records and other evidence pertaining to cost incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by the Government. Each subcontract by the Contractor made pursuant to this Agreement shall include a provision containing the conditions of this Section.

## **XXIII. AWARD:**

DPW intends to award a contract for the project to the offeror who has submitted the lowest, responsible and responsive offeror whose offer meets the requirements and criteria set forth in this IFB.

## **XXIV. "PROHIBITION AGAINST SEX OFFENDERS"**

Pursuant to 5 G.C.A. § 5253,

- (a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.
- (b) All contracts for services to agencies listed herein shall include the following provisions:
  - (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and
  - (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an

offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

## **XXV. IFB LEGAL REQUIREMENTS:**

Each bidder is required to submit the affidavits and assurances that are part of this IFB. Failure to include said affidavits and assurances shall render a bid non-responsive and will be a ground for disqualification.

1. **Affidavit Disclosing Ownership and Commissions per 5 G.C.A. § 5233** As a condition of this RFP, any partnership, sole proprietorship, joint venture, association or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any persons, companies, partners, or joint ventures who have held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship joint venture, association or corporation at any time during the 365 days immediately preceding the submission date of a proposal. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship joint venture, association or corporation which have been held by each such person during the 365 day period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to this RFP for the Offeror and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying. **Affidavit re Disclosing Ownership (Major Shareholders) & Commissions; AG Procurement Form 001.**
2. **Affidavit re Non-Collusion per 2 GAR Division 4 § 3126(b)** By submitting an offer, the Offeror certifies that the price submitted was independently arrived at without collusion. **Affidavit re Non-Collusion; AG Procurement Form 002.**
3. **Affidavit Re No Gratuities or Kickbacks per 2 GAR Division 4 § 11107(e)**. The bidder, Offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in §11206 (Gratuities and Kickbacks) of the Guam Procurement Regulations. **Gratuities.** It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation,

auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract; or to any solicitation or proposal therefor. **Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. **Affidavit Re No Gratuities or Kickbacks; AG Procurement Form 003.**

4. **Affidavit Re Contingent Fees per 2 GAR § 11108** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. **Affidavit Re Contingent Fees; AG Procurement Form 004.**
5. **Affidavit Re Ethical Standards per 2 GAR § 11103.** The bidder, Offeror, or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations. **Re Ethical Standards; AG Procurement Form 005.**
6. **Declaration Re Compliance with U.S. DOL Wage Determination per 5 GCA § 5801 & 5802.**
  - (a) Contractor with regard to all person its employs whose purpose in whole or in part in the direct delivery of services contracted for with the Government in this contract, shall pay such employees in accordance with the Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct deliverance of deliverables to the government of Guam. 5 GCA § 5801. The Contractor shall be responsible for flowing down this obligation to its subcontractors.
  - (b) The Wage Determination most recently issued by the U.S. Department of Labor at the time this contract is awarded to Contractor shall be used to determine wages and benefits which shall be paid to employees pursuant to this clause. 5 GCA § 5801
  - (c) Should any contract contain a renewal clause, then at the time of renewal adjustments there shall be stipulations contained in that contract for applying the Wage Determination, so that the Wage Determination promulgated by the U.S Department of Labor on a date most recent to the renewal date shall apply. 5 GCA § 5801

(d) In addition to the Wage Determination detailed above, health and similar benefits for employees having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor shall apply. Contractor shall pay a minimum of ten (10) paid holidays per annum per employee. 5 GCA § 5802

(e) Any violation of Contractor's or its subcontractors obligations of this section shall be investigated by the Guam Department of Labor and may include a monetary penalty assessment by the Guam Department of Labor of no less than One Hundred Dollars (\$100.00) per day, and no more than One Thousand Dollars (\$1,000.00) per day, until such time as a violation has been corrected, as well as the payment of all back wages and benefits due. 5 GCA § 5803

(f) In addition to any and all other breach of contract actions DPW may have under this procurement, in the event there is a violation in the process set forth above, Contractor may be placed on probationary status by the Chief Procurement Officer of the General Service Agency, or its successor, for a period of one (1) year. During the probationary status, a Contractor shall not be awarded any contract by any instrumentality of the government. A Contractor who has been placed on probationary status, or has been assessed a monetary penalty pursuant to 5 G.C.A. Article 13 Title 5 may appeal such penalty or probationary status to the Superior Court of Guam. 5 GCA § 5804

(g) Contractor's Declaration of Compliance with Wage Determination Laws AG Procurement Form 006 with the most recent Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor is part of this procurement. Contractor agrees to provide upon written request by written certification of its compliance with its obligations as part of each invoice, along with the names of any employees, their positions, and detailed wage and benefits paid in keeping with this section. Additionally upon request by DPW Contractor shall submit source documents as to those individuals providing direct services in part or whole under the contract, and Contractor's payments to them of such wages and benefits.

*Failure to submit the Legal Requirement affidavits and assurances shall be deemed non-responsive and cause for rejection of the bid upon opening.*

## **XXVI. FEDERAL FUNDS -ADDITIONAL LEGAL REQUIREMENTS:**

Bidders are advised that this Project is federally funded by the Department of Interior, Office of Insular Affairs, Compact Impact-Grant No. Guam-CI-2015-1, D15AF00038 and Federal laws, regulations and Executive Orders are applicable to this agreement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by the United States Department of Interior (DOI) 2 C.F.R. Part 200, Subtitle B Chapter XIV.

Federal Forms, Representations and Certifications as follows:

INSTRUCTION TO BIDDERS  
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- A7. Federal Certification re Debarment
- A8. Federal Certification Lobbying
- A9. Federal Certification Non-Segregated Facilities
- A10. Federal Certification Non-Discrimination
- A11. Federal Civil Rights
- A12. Federal Compliance with Federal Financial Accountability Transparency Act
- A13. Federal Limited English Proficiency
- A14. Federal Contract Clauses

***Failure to submit the Legal Requirement affidavits and assurances shall be deemed non-responsive and cause for rejection of the Price Bid upon opening.***

## BID BOND

BOND NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that

\_\_\_\_\_  
(Name of Contractor)

as Principal, hereinafter called the Principal and \_\_\_\_\_

\_\_\_\_\_  
(Name of Surety)

a duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called the Surety, are held and firmly bound unto the Territory of Guam for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for **“Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build); Project No. 470-5-1070-F-BAR”**.

NOW THEREFORE, if the Territory of Guam shall accept the bid of the Principal and the Principal shall not withdraw said bid within sixty (60) calendar days after the opening of bids, and shall within fifteen (15) calendar days after the prescribed forms are presented to him for signature, enter into a Contract with the Territory of Guam in accordance with the terms of such bid and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such Contract and give such bond or bonds, if the Principal shall pay to the Territory of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Territory of Guam may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

BID BOND

New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

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Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(RESIDENT GENERAL AGENT)

BID BOND  
New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR



## BID PRICE FORM

Date: \_\_\_\_\_

To: Director of Public Works  
Government of Guam  
542 North Marine Drive  
Tamuning, GU 96913

Gentlemen:

The undersigned (hereafter called the Bidder), a

\_\_\_\_\_  
(Corporation, Partnership or Individual)

organized and/or licensed to do business under the laws of , hereby proposes and agrees to furnish all the necessary labor, materials, equipment, tools and services necessary for the **“Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build); Project No. 470-5-1070-F-BAR”** all in accordance with the drawings, specifications and other contract documents prepared by the Department of Public Works for the sum of \_\_\_\_\_

\_\_\_\_\_ (\$ \_\_\_\_\_) plus any and all sums to be added and/or deducted resulting from all extra and/or omitted work in accordance with the unit and/or lump sum prices stated in the itemized bid form attached hereto.

The undersigned has examined the location of the proposed work, the drawings, specifications and other contract documents and is familiar with the local conditions at the place where the work is to be performed.

The bid security attached, without endorsement, in the sum of not less than fifteen percent (15%) of the total amount of the bid, is furnished to the Government as a guarantee that the contract will be executed and a performance and payment bond furnished within fifteen (15) calendar days after the acceptance of the bid of the undersigned. In the event that the undersigned bidder shall fail to execute the contract and furnish a **satisfactory performance and payment bond** under the conditions and within the time specified in this bid, the bid security shall be forfeited as liquidated damages for the delay and additional work and costs caused thereby in obtaining another bidder, said being beforehand determined as being reasonable and containing no penalties.

If written notice of the acceptance of this bid is mailed, telegraphed or delivered to the undersigned within sixty (60) days after the opening thereof, the undersigned agrees to execute the form of agreement included as one of the contract documents, and to furnish a performance and payment bond in an amount equal to one hundred percent (100%) of the contract amount within fifteen (15) working days after receipt of such notice.

BID FORM  
Department of Public Health Social Services  
New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

**BASE BID ITEM:**

Description	Quantity	Unit Cost	Total Cost
Provide Design and Construction services for the <b>DPHSS New Building Structure for Group Home for Foster Care Children</b> as Stated in this IFB complete and ready for use.			
a) Design Cost	LS		
b) Construction Cost	LS		

**Total lump sum cost, as per Invitation for Bid Requirements, complete and ready for use:**

\_\_\_\_\_ (\$\_\_\_\_\_).

**Method of award will be** based within the amount of funds available to finance the design and construction contract. Contract award will be made to that lowest, responsive and responsible Offeror.

BID FORM  
Department of Public Health Social Services  
New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

The undersigned hereby acknowledges receipt of the following addenda:

	ADDENDUM NO.	DATED
1	_____	_____
2	_____	_____

If awarded the contract, the undersigned shall be the authorized representative to bind into an agreement with the government and agrees to complete the work within the contract time stipulated in this project.

The undersigned understands that the Government reserves the right to reject any or all bid or to waive any informality or technicality in any bids in the interest of the Government.

RESPECTFULLY SUBMITTED BY:

\_\_\_\_\_  
(CONTRACTOR)

\_\_\_\_\_  
(BY) (*Name and Signature*)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(BUSINESS ADDRESS)

\_\_\_\_\_

BID FORM  
Department of Public Health Social Services  
New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

**AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS**

TERRITORY OF GUAM                    )  
   ) ss.  
 HAGATNA, GUAM                        )

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that *[please check only one]*:

- ☐ The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.
- ☐ The offeror is a corporation, partnership, joint venture, or association known \_\_\_\_\_ as \_\_\_\_\_ *[please state name of offeror company]*, and the persons, companies, partners, or joint venturers who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
_____	_____	_____
_____	_____	_____

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
_____	_____	_____
_____	_____	_____

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

\_\_\_\_\_  
 Signature of one of the following:  
 Offeror, if the offeror is an individual;  
 Partner, if the offeror is a partnership;  
 Officer, if the offeror is a corporation.

Subscribed and sworn to before me  
 This \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC  
 My commission expires: \_\_\_\_\_

**AFFIDAVIT re NON-COLLUSION**

TERRITORY OF GUAM       )  
  ) ss.  
HAGATNA, GUAM            )

\_\_\_\_\_ [state name of affiant signing below], being first  
duly sworn, deposes and says that:

1. The name of the offering company or individual is [state name of company]  
\_\_\_\_\_.

2. The proposal for the solicitation identified above is genuine and not collusive or a sham. The offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any other offeror or person, to put in a sham proposal or to refrain from making an offer. The offeror has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the proposal price of offeror or of any other offeror, or to fix any overhead, profit or cost element of said proposal price, or of that of any other offeror, or to secure any advantage against the government of Guam or any other offeror, or to secure any advantage against the government of Guam or any person interested in the proposed contract. All statements in this affidavit and in the proposal are true to the best of the knowledge of the undersigned. This statement is made pursuant to 2 GAR Division 4 § 3126(b).

3. I make this statement on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

\_\_\_\_\_  
Signature of one of the following:

Offeror, if the offeror is an individual;  
Partner, if the offeror is a partnership;  
Officer, if the offeror is a corporation.

Subscribed and sworn to before me

This \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_, \_\_\_\_\_.

**AFFIDAVIT re NO GRATUITIES or KICKBACKS**

TERRITORY OF GUAM     )  
  ) ss.  
HAGATNA, GUAM         )

\_\_\_\_\_ [state name of affiant signing below],  
being first duly sworn, deposes and says that:

1. The name of the offering firm or individual is [state name of offeror company] \_\_\_\_\_ Affiant is \_\_\_\_\_  
[state one of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have violated, are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). Further, affiant promises, on behalf of offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107(e).

3. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government of Guam employee or former government employee, any payment, gift, kickback, gratuity or offer of employment in connection with the offeror's proposal.

4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

\_\_\_\_\_  
Signature of one of the following:  
Offeror, if the offeror is an individual;  
Partner, if the offeror is a partnership;  
Officer, if the offeror is a corporation.

Subscribed and sworn to before me

This \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires \_\_\_\_\_, \_\_\_\_\_.

**AFFIDAVIT RE ETHICAL STANDARDS**

TERRITORY OF GUAM     )  
  ) ss.  
HAGATNA, GUAM         )

\_\_\_\_\_ [state name of affiant signing below],  
being first duly sworn, deposes and says that:

The affiant is \_\_\_\_\_ [state one of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal. To the best of affiant's knowledge, neither affiant nor any officers, representatives, agents, subcontractors or employees of offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he or she, nor any officer, representative, agent, subcontractor, or employee of offeror will knowingly influence any government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11. These statements are made pursuant to 2 GAR Division 4 § 11103(b).

\_\_\_\_\_  
Signature of one of the following:

Offeror, if the offeror is an individual;  
Partner, if the offeror is a partnership;  
Officer, if the offeror is a corporation.

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires \_\_\_\_\_, \_\_\_\_\_.

**AFFIDAVIT re CONTINGENT FEES**

TERRITORY OF GUAM                    )  
   ) ss.  
 HAGATNA, GUAM                        )

\_\_\_\_\_ [state name of affiant signing below],  
 being first duly sworn, deposes and says that:

1. The name of the offering company or individual is [state name of company]  
 \_\_\_\_\_.

2. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. This statement is made pursuant to 2 GAR Division 4 11108(f).

3. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained a person to solicit or secure a contract with the government of Guam upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This statement is made pursuant to 2 GAR Division 4 11108(h).

4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

\_\_\_\_\_  
 Signature of one of the following:

Offeror, if the offeror is an individual;  
 Partner, if the offeror is a partnership;  
 Officer, if the offeror is a corporation.

Subscribed and sworn to before me

This \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC

My commission expires \_\_\_\_\_, \_\_\_\_\_.



**FORM E**

**DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION**

**Procurement/Project No.:** \_\_\_\_\_

**Name of Company:** \_\_\_\_\_

hereby certifies under penalty of perjury:

- (1) That I am \_\_\_\_\_  
(the offeror/ a partner of the offeror, an officer of the offeror) making the bid or proposal in the foregoing procurement;
- (2) That I have read and understand the provisions of 5GCA § 5801 and 5802 which read;

**§ 5801. Wage Determination Established.**

In such cases where the Government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or corporation (contractor) for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U. S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

**§ 5802. Benefits.**

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

- (3) That the offeror is in full compliance with 5GCA § 5801 and § 5802 , as may be applicable to the procurement referenced herein;
  - (4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. (Instructions-Please Attach)
- \_\_\_\_\_

Department of Public Works Capital Improvement Program  
U.S. Department of Interior, Office of Insular Affairs  
Federal Grant Funds  
Project No.: 470-5-1070-F-BAR  
**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

**PROJECT INFORMATION:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Project Number:** \_\_\_\_\_

**Data Universal Numbering System (DUNS) Number:** \_\_\_\_\_

**Principal Contact:** \_\_\_\_\_

*Firm Name / Contact Name / Title*

*Firm Address/ Phone Number/ Email Address*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

***Bidder/Contractor***

(1) The undersigned certifies, by submission of this proposal, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal agencies;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the undersigned is unable to certify to any of the statements in this certification, such Subrecipient/ Sub Grantee offeror shall attach an explanation to this proposal.

\*Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate to whom it applies, initiating agency, dates of action, and the type of violation.

\_\_\_\_\_  
I, the official named below, hereby swear that I am duly authorized to legally bind the prospective contractor to the above described certification. I am fully aware that this certification is made under penalty of perjury under the laws of Guam.

\_\_\_\_\_  
Signature/Authorized Certifying Official

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Prospective Contractor/Organization

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Contractor License No. (if any)

The Government of Guam  
Department of Public Works Capital Improvement Program  
U.S. Department of Interior, Office of Insular Affairs  
Federal Grant Funds

Project No.: 470-5-1070-F-BAR

Certification - Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Signature/Authorized Certifying Official

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Typed Name and Title

---

Applicant/Organization

---

Date Signed

**ATTACHMENT – A9**

The Government of Guam  
Department of Public Works Capital Improvement Program  
U.S. Department of Interior, Office of Insular Affairs  
Federal Grant Funds

Project No.: 470-5-1070-F-BAR

Certification of Non-Segregated Facilities  
(Contractors/Subcontractors)

*A certification of Non-Segregated Facilities must be submitted prior to the award of a contract or subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause).*

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin, because of habit, local custom, or any other reason. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from his proposed subcontractors prior to the award of subcontract exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he will retain such certifications in his files.

*Certification:* The information above is true and complete to the best of my knowledge and belief.

NAME & TITLE OF SIGNER (Please Type):

---

SIGNATURE:

---

DATE:

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**NOTE:** *The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.*

**ATTACHMENT – A10**

The Government of Guam  
Department of Public Works Capital Improvement Program  
U.S. Department of Interior, Office of Insular Affairs  
Federal Grant Funds

Project No.: 470-5-1070-F-BAR

**Certification – Non-Discrimination**

The undersigned certifies, to the best of his or her knowledge and belief, that Contractor and its subcontractors will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee -3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

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Signature/Authorized Certifying Official

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Typed Name and Title

---

Applicant/Organization

---

Date Signed

**ATTACHMENT – A11**

Guam Department of Public Works Capital Improvement Program  
U.S. Department of Interior, Office of Insular Affairs  
Federal Grant Funds

Project No.: 470-5-1070-F-BAR

Civil Rights Requirements

Bidder/Contractor

Civil Rights Contact Person:

Title/Address:


Telephone Number:

Number of persons employed by the organizational unit:

Department of Public Works Capital Improvement Program  
U.S. Department of Interior, Office of Insular Affairs  
Federal Grant Funds

Project No.: 470-5-1070-F-BAR

**Compliance with Federal Financial Accountability Transparency Act**

Bidder/Contractor/Sub-recipient/ Sub Grantee agree that:

Award Term for Federal Financial Accountability and Transparency Act (FFATA)

Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if— i. the total Federal funding authorized to date under this award is \$25,000 or more; ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the

## ATTACHMENT – A12

public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <http://www.ccr.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

### c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if— i.in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and ii.The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2.Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i.To the recipient.
- ii.By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

### d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

### e. Definitions. For purposes of this award term:

1.Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe; ii. A foreign public entity; iii. A domestic or foreign nonprofit organization; iv. A domestic or foreign for-profit organization; v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.



## ATTACHMENT – A12

2.Executive means officers, managing partners, or any other employees in management positions.

3.Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_ .210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4.Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and ii.Is accountable to you for the use of the Federal funds provided by the subaward.

5.Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

#

SUBMITTED BY:

Signature of Authorized Official:

Date:

Name of Authorized Official:

Name of Organization:

**ATTACHMENT – A13**

**The Government of Guam  
Department of Public Works Capital Improvement Program  
U.S. Department of Interior, Office of Insular Affairs  
Federal Grant Funds**

**Limited English Proficiency Certification**

I certify that Limited English Proficiency persons have meaningful access to any services under any developed (if applicable) program(s). National origin discrimination includes discrimination on the basis of Limited English Proficiency (LEP). Meaningful access may entail providing language assistance services, including oral and written translation when necessary.

**SUBMITTED BY:**

Signature:	Date:
Name:	Title:
Agency:	

## **ATTACHMENT – A14**

### **Department of Public Works Capital Improvement Program U.S. Department of Interior, Office of Insular Affairs Federal Grant Funds**

#### **Required Federal Construction Contract Clauses**

Bidder/Contractor agrees to the following contract clauses.

##### **Access to Records and Other Review.**

The Contractor, including its subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by DPW, the Public Auditor, and the Inspector General of the Department of Interior or its delegates. Each subcontract by the Contractor pursuant to this contract shall include a provision containing the conditions of this section.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three (3) year period, the records must be kept until all issues are resolved, or until the end of the regular three (3) year period, whichever is later.

Records for non-expendable property acquired in whole or in part, with funds from this contract funds must be retained for three (3) years after its final disposition.

The Contractor shall provide access to any project site(s) to DPW, the Public Auditor, and the Inspector General of the Department of Interior or their delegates. The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

##### **Ownership of Documents.**

All briefs, memoranda and incidental to the Contractor's work or materials furnished hereunder shall be and remain the property of DPW including all publication rights and copyright interests, and may be used by DPW without any additional cost to DPW.

##### **The Office of Insular Affairs Seal.**

The OIA seal is to be displayed on all construction signage that is intended to identify the project and the funders, as appropriate. The seal must remain intact and unchanged and may only be displayed using either the standard color scheme or a single color that complement the background where it appears.

##### **Prohibition Against the Use of Lead-Based Paint.**

1436.570 Prohibition against use of lead-based paint.

## ATTACHMENT – A14

(a) *Definitions.* As used in this section, “residential structure:” means any house, apartment, or structure intended for human habitation including any institutional structure where persons reside such as an orphanage, boarding school dormitory, day care center, or extended care facility.

As prescribed in 1436.570 (b) the follow clause shall apply:

### 48 CFR 1436.236-70 Prohibition Against Use of Lead-Based Paint – Department of Interior

Paint containing more than .06 percent by weight of lead in paint, or the equivalent measure of lead in the dried film of paint already applied, shall not be used in construction or rehabilitation of residential structures under this contract or any resulting subcontracts.

### **Contracting with small and minority businesses, women’s business enterprises.**

As required by 2 CFR §200.321(6) Contractor agrees as follows:

Contractor agrees to affirmatively takes steps listed in §200.321 (1)-(5) to contract with small and minority businesses, women's business enterprises, and labor surplus area firms in its subcontracting process.

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

### **Conflict of Interest.**

In keeping with 2 CFR §200.112 Contract agrees as follows:

During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the Contractor fully performing his/her obligations under this contract.

Additionally, the Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the DPW.

Thus, the Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Contractor’s fully performing its obligations to the DPW under the terms of this contract, without the prior written approval of the DPW.

## **ATTACHMENT – A14**

In the event that the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the DPW a full disclosure statement setting forth the relevant details for the DPW's consideration and direction. Failure to promptly submit a disclosure statement or to follow the DPW's direction in regard to the apparent conflict shall be grounds for termination of the contract.

Further, the Contractor shall maintain a written code of standards governing the performance of its agent(s) engaged in the award and administration of contracts. Neither the Contractor nor its agent(s) shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- The employee, officer or agent;
- Any member of the employee's immediate family;
- The employee's partner; or
- An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Neither the Contractor nor its agent(s) will solicit nor accept gratuities, favors, or anything of monetary value from Contractor's potential subcontractor's, or parties to sub-agreements.

### **Termination for Financial Exigency.**

DPW shall have the right to terminate this contract for financial exigency by giving the Contractor at least thirty (30) days prior written notice. For the purposes of this provision, a financial exigency shall be a determination made by the Director of DPW based on the Guam legislature failure to fund this contract or in the event the DOI OIA fails to funds DPW for this program. If notice of such termination is so given, this contract shall terminate on the expiration of the time period specified in the notice, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. The Contractor may submit a claim in the same manner as is set forth for the termination for convenience claim.

### **Taxes.**

The Contractor shall pay all taxes and other such amounts required by federal, state, and local laws, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

### **Publicity.**

Any publicity given to the projects, programs or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and other public notices in whatever form, prepared by the Contractor, will identify the DOI OIA, and DPW and will not be released without the prior written approval of DPW.

**Hatch Act.**

The Contractor shall comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

**Flood Insurance.**

The Contractor shall comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

**NEPA and Related Acts.**

The Contractor shall comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

In the event it becomes applicable to this Project, the Contractor agrees to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Contractor will assist DPW in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

**Equal Employment Opportunity Compliance.**

The Contractor and all subcontractors must also comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

A. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Contractor's project activities under this contract. The provisions of the

## ATTACHMENT – A14

Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the Contractor agrees to comply with the following minimum specific requirement activities of EEO:

1. The Contractor will work with DPW and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

2) The Contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

B. EEO Officer: The Contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

C. Dissemination of Policy: All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

1. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

2. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the Contractor's EEO obligations within thirty days following their reporting for duty with the Contractor.

3. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the Contractor's procedures for locating and hiring minorities and women.

4. Notices and posters setting forth the Contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

5. The Contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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D. Recruitment: When advertising for employees, the Contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

1. The Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the Contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the Contractor for employment consideration.

2. In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the Contractor is expected to observe the provisions of that agreement to the extent that the system meets the Contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Federal nondiscrimination provisions.

3. The Contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

E. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

1. The Contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

2. The Contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

3. The Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

4. The Contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with its obligations under this Agreement, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of their avenues of appeal.



F. Training and Promotion:

1. The Contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
2. Consistent with the Contractor's work force requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision. DPW may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
3. The Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
4. The Contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

G. Unions: If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the Contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

1. The Contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
2. The Contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
3. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to DPW and shall set forth what efforts have been made to obtain such information.
4. In the event the union is unable to provide the Contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining

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agreement) does not relieve the Contractor from the requirements of this paragraph. In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, the Contractor shall immediately notify DPW.

H. Reasonable Accommodation for Applicants/Employees with Disabilities: The Contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

I. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The Contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this Agreement.

1. The Contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this Agreement.

2. The Contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

J. Records and Reports: The Contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the Contractor for all the Work under this Agreement and shall be available at reasonable times and places for inspection by authorized representatives of DPW.

1. The records kept by the Contractor shall document the following:

- a. The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

- b. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

- c. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

2. The Contractor and any subcontractors will submit an annual report to DPW each July for the duration of the Project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the Work under this Agreement. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the Contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll

period preceding the end of July.

**Nonsegregated Facilities.**

The Contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The Contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The Contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the Contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The Contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

**Davis-Bacon Act Compliance.**

**A. Minimum Wages**

1. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

2. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following

criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

3. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

4. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

5. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

6. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

7. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### B. Withholding

The contracting agency shall upon its own action or upon written request of an authorized

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representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract, or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, DPW may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### C. Payrolls and Basic Records

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to DPW. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to DPW for transmission to the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security

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numbers to the prime contractor for its own records, without weekly submission to DPW.

3. Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

4. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 3.b.(2) of this section.

5. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

6. The Contractor or subcontractor shall make the records required under this section available for inspection, copying, or transcription by authorized representatives of the contracting agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal granting agency may, after written notice to the Contractor, or the contracting agency, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### D. Apprentices and Trainees

#### 1. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not

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individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

### 2. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a

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trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

3. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

E. Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

F. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

I. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and DPW, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of eligibility.

1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a



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Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### **Contract Work Hours and Safety Standards Act.**

As used in these paragraphs, the terms laborers and mechanics include watchmen and guards.

A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this section.

C. Withholding for unpaid wages and liquidated damages. DPW shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.

D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

### **Safety: Accident Prevention.**

A. In the performance of this contract the Contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

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B. It is a condition of this contract, and shall be made a condition of each subcontract, which the Contractor enters into pursuant to this contract, that the Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

C. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

### D. Hazardous Materials.

1. The Contractor is responsible for compliance with any applicable Federal, State, and local laws or requirements regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in this Agreement and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to DPW and the Project Manager in writing.

2. The Contractor shall indemnify DPW for the cost and expense incurred: (a) for remediation of a material or substance the Contractor brings to the site and negligently handles; or (b) where the Contractor fails to perform its obligations, except to the extent that the cost and expense are due to DPW's fault or negligence.

E. Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

### Drug Free Workplace.

A. The Contractor shall, within 30 days after award:

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2. Establish an ongoing drug-free awareness program to inform such employees about –

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

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3. Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (1) of this clause;

4. Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

5. Notify the Hospital Administrator in writing within 10 days after receiving notice under subdivision (4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

6. Within 30 days after receiving notice under subdivision (4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

7. Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (1) through (6) of this clause.

B. The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

C. In addition to other remedies available to DPW, the Contractor's failure to comply with the requirements of paragraph (B) or (C) of this clause may render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

### **Debarment (Guam and Federal)**

A. Guam Debarment and Suspension. Contractor warrants that it will comply with the provisions of 5 GCA Chapter 5 Articles 9 and 11, subject to debarment or suspension.

B. Federal Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections

## **ATTACHMENT – A14**

85.105 and 85.110. The Contractor certifies that it and its principals: 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; 2) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated above; and 4) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default. Contractor further warrants that it is not a party listed on the government wide exclusions in the System for Award Management (SAM), and will comply with the provisions of Subpart C of 2 CFR Part 1326, "Nonprocurement Debarment and Suspension," (published in the Federal Register on December 21, 2006, 71 FR 76573) which generally prohibits entities that have been debarred, suspended, or voluntarily excluded from participating in nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of federal financial assistance regarding transactions with other persons, including subrecipients and contractors. Contractor will provide a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transaction (Sub-Recipient), which is a material representation of fact. Submission of this certification is a pre-requisite for entering into this Agreement, imposed by Executive Order 12549, 28 CFR Part 67, Section 67.510.

### **Implementation of Clean Air Act and Federal Water Pollution Control Act.**

By executing this contract, and any subcontracts, as appropriate, the Contractor and any subcontractors will be deemed to have stipulated as follows:

A. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

B. That the Contractor agrees to include or cause to be included the requirements of paragraph (A) of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

### **Procurement of Recovered Materials.**

The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**ATTACHMENT – A14**

**SUBMITTED BY:**

**Signature of Authorized Official:**

**Date:**

**Name of Authorized Official:**

**Name of Organization:**

**CONTRACT NO.**\_\_\_\_\_

**CONTRACT**

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(Contractor)

Public Works  
(Department)

2017

Contract for: **Department of Public Health & Social Services New Building Structure for  
Group Home for Foster Care Children (Design-Build)**

Project no.: **470-5-1070-F-BAR**

Funded By: **DOI OIA Compact-Impact-Grant No. Guam-CI-20151-1, D15AF00038**

Amount: \$

FORMAL CONTRACT  
Department of Public Health and Social Services  
New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

## FORMAL CONTRACT

THIS AGREEMENT AND FORMAL CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and between the Government of Guam, hereinafter called the "Government", represented by the Contracting Officer executing this contract, party of the first part, and \_\_\_\_\_, a sole proprietor/partnership/corporation of Guam, hereinafter called the "Contractor", party of the second part.

WITNESSETH, That whereas the Government intends to perform the **"Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build), Project no.:470-5-1070-F-BAR"** hereinafter called the "Project", in accordance with the drawings, specifications and other contract documents prepared by the Department of Public Works.

NOW THEREFORE, the Government and Contractor for the considerations hereinafter set forth, agree as follows:

I. THE CONTRACTOR AGREES to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all the work required for the construction of the Project, in strict compliance with the contract documents herein mentioned, which are hereby made a part of the contract, including the following addenda:

Addendum No.

Dated

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(a) Contract Time: The Contractor agrees to commence work under this contract upon written notice to proceed, and **to complete the project ready for use and operation within Two**

FORMAL CONTRACT  
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**Hundred Seventy (270) calendar days** of the commencement of the contract time as stated in the Instructions to Bidders of the contract.

(b) Subcontractors: The Contractor agrees to bind every subcontractor by the terms of the contract documents. The contract documents shall not be construed as creating any contractual relation between any subcontractor and the Government.

II. SUBJECT TO AVAILABILITY OF FUNDS, THE GOVERNMENT AGREES to pay, and the Contractor agrees to accept, in full payment for the performance of this contract, *the contract amount of* \_\_\_\_\_, (\$ \_\_\_\_\_) *plus* any and all sums to be added and/or deducted resulting from all extra and/or omitted work in connection therewith, as authorized under the terms as stated in the General Conditions of the contract, all in accordance with the terms as stated in the contract documents.

(a) Progress payments will be made as specified in the General Conditions.

III. CONTRACT DOCUMENTS: It is hereby mutually agreed that the following list of instruments, plans, specifications and documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the contract documents, all of which are made a part hereof, and collectively evidence and constitute the contract between the parties hereto, and they are as fully a part of this Agreement as if they were set out verbatim and in full herein, and are designated as follows:

- a) Invitation to Bid
- b) Instructions to Bidders
- c) Unpriced Technical Proposal
- d) Bid Form
- e) Federal Contract Clauses
- f) Formal Contract
- g) Special Provisions
- h) General Conditions

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- i) Prevailing Wage Rates
- j) Plans
- k) Addendum(s)

IV. LIQUIDATED DAMAGES: The Contractor further agrees to pay to the Government *the amount of \$1,100.00 per calendar day*, not as a penalty, but as a reasonable liquidated damages for breach of this contract by the Contractor by his failing, neglecting or refusing to complete the work within the time herein specified and said sums shall be paid for each consecutive calendar day thereafter that the Contractor shall be in default after the time stipulated in the contract for completing the work ready for use and/or operation.

V. WARRANTY: The Contractor warrants that the design and construction services shall be performed in accordance with contract requirements for a period of one year. Design and Construction works related not conforming to the Contract requirements shall be corrected at no additional cost to the Government.

VI. COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to terminate the contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fee. The warranty shall not apply to commission's payable by Contractors upon contracts or sales secured or made through bonafide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

VII. OTHER CONTRACTS. The Government may award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under other contracts as may be directed by the Contracting Officer. The Contractor shall

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not commit or permit any act which will interfere with the performance of work by any other contractor.

#### VIII. DISPUTES.

1. The Government and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this procurement and any resulting contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request the Government in writing to issue a final decision within sixty days after receipt of the written request. If the Government does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as though the government had issued a decision adverse to the Contractor.
2. The Government shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.
3. The Government's decision shall be final and conclusive, unless fraudulent or unless the contractor appeals the decision.
4. This subsection applies to appeals of the government's decision on a dispute. For money owed by or to the Government under this contract, the Contractor shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by the Government or from the date when a decision should have been rendered. For all other claims by or against the government arising under this contract, the Office of the Public auditor has jurisdiction over the appeal from the decision of the Government. Appeals to the Office of the Public Auditor must be made within sixty days of the Government's decision or from the date the decision should have been made.

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5. The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

6. The Contractor shall comply with the Government's decision and proceed diligently with performance of the contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, the contract, except where the Contractor claims a material breach of the contract by the Government. However, if the Government determines in writing that continuation of services under the contract is essential to the public's health or safety, then the contractor shall proceed diligently with performance of the contract notwithstanding any claim of material breach by the Government

IX. CONTRACT BINDING. It is agreed that this contract and all of the Covenants hereof shall inure to the benefit of and be binding upon the Government and the Contractor respectively and his partners, successors, assignees and legal representatives. Neither the Government nor the Contractor shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party. It is hereby mutually agreed by and between the parties hereto that no mechanic, contractor, subcontractor, material man or other person can or will contract for or in any other manner have or acquire any lien upon the building or works covered by this contract, or the land upon which the same is situated.

X. RESTRICTION. The Contractor warrants that no person in its employment who has been convicted of sex offense under the provisions of chapter 25 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex Offender Registry shall provide services on behalf of the Contractor while on government of Guam property, with exception of public highways. If any employee of the Contractor is providing services on government property and is convicted

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subsequent to an award of a contract, then the Contractor warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will remove immediately such convicted person from providing services on government property. If the Contractor is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the Contractor to take corrective action. The Contractor shall take corrective action within twenty-four hours of notice from the Government, and the Contractor provider shall notify the Government when action has been taken. If the Contractor fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

XI. INDEMNITY. The Contractor agrees to save and hold harmless the Government, its officers, agents, representatives, successors and assigns and other governmental agencies from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage arising or growing out of the acts or omissions of the Contractor, Contractor's officers, agents, servants or employees under this contract.

XII. CLAIMS AGAINST GOVERNMENT. The Contractor expressly recognizes that the Government Claims Act (Title 5 of the Guam Annotated, Chapter 6) applies with respect only to claims of money owed by or to the Contractor against the Government if the claim arises out of or in connection with this agreement. The Contractor also expressly recognizes that all other claims by the Contractor against the Government are subject to the Guam Procurement Law (Title 5 of the Guam Annotated, Chapter 5).

XIII. CONSENT TO JURISDICTION. The Contractor hereby expressly consents to the jurisdiction of and the forum of the courts of Guam with respect to any and all claims which may arise by reason of this Agreement, except as otherwise may be provided by the Guam Procurement Law. The Contractor waives any and all rights it may otherwise have to contest the same or to proceed in a different jurisdiction or forum.

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XIV. MANDATORY REPRESENTATION BY CONTRACTOR REGARDING GENERAL ETHICAL STANDARDS (2 GAR Div. 4 11103 (b)). With respect to this Agreement and any other contract that the Contractor may have, or wish to enter into, with any Government of Guam agency, the Contractor represents that it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.

XV. MANDATORY REPRESENTATION BY THE CONTRACTOR REGARDING PROHIBITION AGAINST GRATUITIES AND KICKBACKS (2 GAR Div. 4 11107(e)) With respect to this Agreement and any other contract that the Contractor may have or wish to enter into with any Government of Guam agency, the Contractor represents that he has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.

XVI. COMPLIANCE TO PUBLIC LAW 24-100, PRODUCTS MANUFACTURED FROM RECYCLED GLASS. Pursuant to 5 G.C.A. Section 5218, any individual or company submitting a response to this solicitation shall include the purchase of available recycled glass pulverized on Guam or appropriate products manufactured therefrom. The contract awarded under this solicitation shall determine the suitable percentage of recycled glass to be used in the project and, as a condition of the award of the contract, shall require the Contractor to identify and certify in writing the percentage of recycled glass contained in the material offered. The acceptable percentage of recycled glass has been determined to be 0% for this project.

XVII. FEDERAL FUNDS. The Contractor acknowledges that the contract is federally funded by the Department of Interior, Office of Insular Affairs, and Compact Impact-Grant No. Guam-CI-2015-1, D15AF00038 and Federal laws, regulations and Executive Orders are applicable to this agreement, and the Uniform Administrative Requirements, Cost Principles, and Audit

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Requirements in 2 C.F.R. Part 200, as adopted and supplemented by the United States Department of Interior (DOI) 2 C.F.R. Part 200, Subtitle B Chapter XIV.

Contractors' Federal Forms, Representations and Certifications as follows:

- A7. FEDERAL CERTIFICATION re DEBARMENT
- A8. FEDERAL CERTIFICATION LOBBYING
- A9. FEDERAL CERTIFICATION NON-SEGREGATED FACILITIES
- A10. FEDERAL CERTIFICATION NON-DISCRIMINATION
- A11. FEDERAL CIVIL RIGHTS
- A12. FEDERAL COMPLIANCE WITH FEDERAL FINANCIAL  
ACCOUNTABILITY TRANSPARENCY ACT
- A13. FEDERAL LIMITED ENGLISH PROFICIENCY
- A14. FEDERAL CONTRACT CLAUSES

are incorporated herein as if fully re-written. The Contractor agrees to flow through where applicable provisions to its subcontractors.

The Contractor agrees as required by 2 CFR 200.326 to comply the clauses set forth in Appendix II of Part 200; and the Contractor agrees to flow through where applicable to the provisions to its subcontractors.

#### Appendix II to Part 200

#### Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors

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- violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or

Grants from the United States”). The Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33



U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (J) Procurement of recovered materials. (See §200.322) A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a

satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

SIGNATURE PAGE FOLLOWS:

FORMAL CONTRACT  
Department of Public Health and Social Services  
New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

IN WITNESS WHEREOF the parties hereto have executed this contract as of the day and year first written.

CONTRACTOR

GOVERNMENT

\_\_\_\_\_

**GLENN LEON GUERRERO**

Director

Department of Public Works

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CERTIFIED FUNDS AVAILABLE:

CLEARED AS PER BBMR'S REVIEW:

\_\_\_\_\_

Certifying Officer

Department of Public Health and Social Services

**JOSE A. CALVO**

Director

Bureau of Budget Management and  
Research

*Allotment No.:*

*Amount:*

Date: \_\_\_\_\_

APPROVED AS TO LEGALITY AND FORM:

**ELIZABETH BARRETT ANDERSON**

Attorney General

Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_

**EDDIE BAZA CALVO**

Governor of Guam

Date: \_\_\_\_\_

FORMAL CONTRACT

Department of Public Health and Social Services

New Building Structure for

Group Home for Foster Care Children (Design-Build)

Project no.: 470-5-1070-F-BAR

## PERFORMANCE AND PAYMENT BONDS

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_

(Name of Contractor)

Hereinafter called the Contractor and \_\_\_\_\_

(Name of Surety)

a corporation duly organized under the laws of the State of \_\_\_\_\_ and authorized to transact business in Guam, as Surety, are held and firmly bound unto the Government of Guam, as obligee, hereinafter called the Government for use and benefit of claimants as herein below defined, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has by written Agreement dated \_\_\_\_\_, 2017 entered into a Contract with the Government for the “**Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build), Project no.:470-5-1070-F-BAR**” in accordance with Drawings and Specifications prepared by the Department of Public Works, which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform said Contract, and shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- A. The Surety hereby waives notice of any alteration or extension of the time made by the Government provided the same is within the scope of the Contract.
- B. Whenever Contractor shall be and is declared in default by the Government to be in default

PERFORMANCE AND PAYMENT BOND  
Department of Public Health & Social Services  
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under the Contract, the Government having performed territorial obligations thereunder, the Surety may promptly remedy the default or shall promptly:

1. Complete the Contract in accordance with its terms and conditions; or
  2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Government and the Surety of the lowest responsive, responsible bidder, arrange for a Contract between such bidder and the Government, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less than balance of the Contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price", as used in this paragraph shall mean the total amount payable by the Government to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Government to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Government or successors of the Government.
- C. A claimant is defined as one having a direct contract with the Contractor or with a subcontractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- D. The above-named Contractor and Surety hereby jointly and severally agree with the Government that every claimant as herein defined, who has not been paid in full before the expiration of a period of forty five (45) days after the date on which the last of such

claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Government shall not be liable for the payment of any costs or expenses of any such suit.

E. No suit or action shall be commenced hereunder by any claimant:

1. Unless claimant, other than one having a direct contract with the Contractor, shall have given written notice to any two of the following:

The Contractor, the Government, or the Surety above named, within forty five (45) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Contractor at any place the principal maintains an office or conducts its business.

2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
3. Other than in a court of competent jurisdiction in and for the Territory of Guam.

F. The amount of the payment bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2017, A.D.

IN THE PRESENCE OF:

**(Note: If the Principals are Partners, each  
must execute the Bond)**

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(CONTRACTOR) (SEAL)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(RESIDENT GENERAL AGENT)

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## **GENERAL CONDITIONS**

### **I. DEFINITIONS**

#### **1. Owner**

The term "Owner" as used herein means the Government of Guam, Agana, Guam, and shall include the Governor of Guam, and/or his authorized representatives.

#### **2. Contracting Officer**

The term "Contracting Officer" as used herein means the Director of Public Works of the Government of Guam and shall include his authorized representatives.

#### **3. Contractor**

The term "Contractor" as used herein means the party or parties who or which shall have duly entered into a contract with the Government of Guam to perform the work herein contemplated or his or their authorized assignee.

#### **4. Notice**

The term "Notice" as used herein shall mean and include all written notice demands, instructions, claims, approvals and disapprovals required to obtain compliance with contract requirements. Any written notice by either party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm, or corporation constituting the other party to the contract, or to his, their, or its duly authorized agent, representative, or officers, or when enclosed in a postage prepaid envelop addressed to such last known business address and deposited in a United States mail box. The Contractor must provide and maintain a post office address within the Territory of Guam and file the same with the Contracting Officer.

#### **5. Forms Enclosed**

The copies of the form of agreement, form of bid bond, form of performance and of payment bond enclosed herewith are incorporated in these General Conditions by reference and are made a part hereof to the same extent as though fully set forth herein.

## **II. CONSTRUCTION CONTRACT**

### **1. Contract Documents**

- (a) The contract documents consist of the Agreement, the drawings, and specifications, including all addenda and alterations made in the documents prior to their execution.
- (b) The contract documents shall be signed by the Owner and Contractor in as many original counterparts as may be mutually agreed.
- (c) Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all. In case of discrepancies between the contract documents, the specifications shall take precedence over the drawings, and the agreement shall take precedence over the drawings and specifications. Any discrepancies between the contract documents shall be called to the attention of the Contracting Officer before proceeding with work affected thereby.
- (d) It will be conclusively presumed that the Contractor has read, examined and agreed to each and every term, conditions, provisions, covenant or agreement in the drawings, specifications, proposals, contract, and bond related to the work to be carried on, said documents being on file in the Contracts Administration Section office, Department of Public Works, Tumon, Guam.

### **2. Drawings**

- (a) The general character and scope of the work are illustrated by the drawings. Any additional detail drawings and other information deemed necessary by the Contracting Officer will be furnished to the Contractor when and as required.
- (b) In case of differences between small scale and large scale drawings, the large-scale drawings shall govern. Figured dimensions on the drawings shall be considered primary compared with measurements obtained through scaling of drawings. The Contractor shall verify all dimensions, and if any be lacking, he shall call the attention thereto and be governed by the decision of the Contracting Officer.
- (c) Where on any of the drawings a portion of the work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the work.

(d) Where the word "similar" occurs on the drawings, it shall be interpreted in its general sense and not as meaning identical.

(e) The approval of shop and setting drawings will be general and, except as otherwise provided in paragraph, shall not be construed (1) as permitting any departure from the contract requirements, (2) as relieving the Contractor of the responsibility for any error in details, dimensions and otherwise that may exist; (3) as approving departures from additional details or instructions previously furnished by the Contracting Officer.

### **3. Detail Drawings and Instructions**

(a) The Contractor will be furnished additional instructions and detail drawings as may be necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor shall be consistent with the contract documents and true developments thereof, and shall be so prepared that they can be reasonably interpreted as a part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

(b) The Contracting Officer, at any time, without notice to the sureties may, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services for site; or
- (4) Directing acceleration in the performance of the work.

(c) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instructions, interpretations or determination from the Contracting Officer) which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances and source of the order and that the Contractor regards the order as a change order.

(d) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change order under this clause or entitle the Contractor to an equitable adjustment hereunder.

(e) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly, provided, however, that except for claims based on defective specifications no claim for any change under (b) above shall be allowed for any costs incurred more than 20 calendar days before the Contractor gives written notice as therein required. And provided further, that in the case of defective specifications for which the Owner is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(f) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 calendar days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice under (b) above.

(g) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

#### **4. Shop Drawings**

(a) The Contractor shall submit for the approval of the Contracting Officer, shop and setting drawings and schedules required by the specifications or that may be requested by the Contracting Officer and no work shall be fabricated by the Contractor, save at his own risk, until such approval has been given.

(b) Drawings and schedules shall be submitted in quadruplicate (unless otherwise specified) accompanied by letter of transmittal which shall give a list of the numbers and dates of the drawings submitted. Drawings shall be complete in every respect and bound insets.

(c) The Contractor shall submit all drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and rechecking.

(d) The drawings submitted shall be marked with the name of the project, numbered consecutively and bear the stamp of approval of the Contractor as evidence that the drawings have been checked by the Contractor. Any drawings

submitted without this stamp of approval will not be considered and will be returned to the Contractor for resubmission. If the shop drawings show variations from the requirements of the contract because of standard shop practice or other reasons, the Contractor shall make specific mention of such variation in his letter of transmittal so that if any variations are acceptable, suitable action may be taken for proper adjustment; otherwise, the Contractor will not be relieved of the responsibility for executing the work in accordance with the contract even though such shop drawings have been approved.

(e) If a drawing as submitted indicates a departure from the contract requirements which the Contracting Officer finds to be in the interest of the Owner and to be so minor as not to involve a change in the contract price or time for performance, he may approve the drawing.

## **5. Specifications and Drawings**

(a) The Contractor shall keep on the work site a copy of the drawings and specifications including all authorized change orders, and shall at all times give the Owner, Contracting Officer and their representatives access thereto.

(b) All drawings and specifications and copies thereof furnished by the Contracting Officer are his property and shall not be used on other projects without his consent. Upon completion of this project all copies of the drawings and specifications except the signed contract sets are to be returned to the Contracting Officer upon his request.

## **6. Special Requirements**

(a) Where special requirements, provisions or specifications or detailed specifications are attached hereto or are included in the proposal they shall be considered a part of these general conditions or specifications or detailed specifications as fully as if contained herein. Should any special provisions be in conflict with these general conditions or specifications or detailed specifications, said special requirements, provisions or detailed specifications shall govern.

(b) Person in charge of electrical wiring and installations shall be a licensed Master Electrician and/or registered electrical engineer in Guam.

## **7. Explanation to Bidders**

No oral explanation in regard to the meaning of the drawings and specifications will be made and no oral instructions will be given before the award of the



contract. Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated in writing to the Contracting Officer for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them. Every interpretation made to a bidder will be in the form of an addendum to the contract documents which, if issued, will be sent as promptly as practicable to all persons to whom the drawings and specifications have been issued. All such addenda shall become part of the contract documents.

### **III. BIDS, BIDDER RESPONSIBILITIES**

#### **1. Conditions at Site or Building**

(a) Bidders should visit the site and shall be responsible for having ascertained pertinent conditions such as location, accessibility, and general character of the site or building, the character and extent of existing work within or adjacent to the site, and any other work being performed thereon at the time of the submission of his bid. No extra compensation will be made by reason of any misunderstanding or error as regards to the site, the conditions thereof, accessibility or the amount of kind of work to be performed.

#### **2. Submission of Bids**

- a. The bidder is required to bid on all items called for in the Bid Form.
- b. Bids shall be submitted on the forms furnished or copies thereof, and shall be signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the proposal or irregularities of any kind may be rejected by the Owner as being incomplete.
- c. Each bid must give the full business address of the bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed in the name of the partnership by one of the members of the partnership or by an authorized representative followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the State of incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word "president", (agent or other designation, without disclosing his principal), may be held to the bid of the individual signing. When requested by the

Owner, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

### **3. Bid Guarantee**

Bids shall be accompanied by a bid guarantee of not less than fifteen percent (15%) of the total bid amount for which an award can be made. Bid guarantee may be bid bond (form enclosed), certified check or cashier's check. Bid bond shall be signed by the bidder, two major officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety and shall be accompanied with copies of current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation, Power of Attorney issued by the Surety to the Resident General Agent and Power of Attorney issued by two major officers of the Surety to whoever is signing on their behalf. Certified check or cashier's check must be issued by a banking institution licensed to do business on Guam and shall be made payable to the Treasurer of Guam. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw his bid for a period of sixty (60) calendar days after the scheduled closing time for the receipt of bids; that if his bid is accepted, he will enter into a formal contract with the Owner in accordance with the form of agreement included as a part of the contract documents, and that the required performance and payment bond will be given; and that in the event of the withdrawal of said bid within said period, or the failure to enter into said contract and give said bond within fifteen (15) calendar days after he has received notice of the acceptance of his bid, the bidder shall be liable to the Owner for the full amount of the bid guarantee as representing the damage to the Owner on account of the default of the bidder in any particular hereof. The bid guarantee shall be returned to all except the three lowest bidders within three days after the formal opening of bids. The bid guarantee of the second and/or third low bidder shall be returned thirty (30) calendar days after the bid opening date upon request, provided that he has not been notified by the Owner of the acceptance of his bid prior to the date of such request. The bid guarantee of the lowest qualified bidder shall be returned within forty eight (48) hours after the Owner and the qualified bidder have executed the contract.

### **4. Withdrawal of Bids**

Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right to the withdrawal of the bid after it has been opened.

**5. Publicity of Bids**

At the time fixed for the opening of bids, the contents of the bids will be made public for the information of bidders and others properly interested who may be present either in person or by representation.

**6. Receipt and Opening of Bids**

(a) Bids will be opened publicly at the time and place stated in the invitation for bids. The officer whose duty it is to open them will decide when the specified time has arrived and bids received thereafter will not be considered. No responsibility will be attached to any officer for the premature opening of a bid not properly addressed and identified.

(b) Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to time set for opening.

**7. Rejection of Bids**

The Owner reserves the right to reject any and all bids when such rejection is in the interest of the Owner and to reject the bid of a bidder who is not in a position to perform the contract.

**8. Award of Contract**

(a) The contract will be awarded as soon as possible to the lowest responsive and responsible bidder, provided it is in the interest of the Owner to accept his bid.

(b) The Owner reserves the right to waive any informality in bids received when such waiver is in the interest of the Owner. The Owner also reserves the right to accept any item in the bid and to reject any item in the bid unless otherwise specified by the Owner.

**9. Performance and Payment Bond**

The successful bidder must deliver to the Owner an executed performance and payment bond (forms enclosed) in an amount at least equal to one hundred percent (100%) of the accepted bid as security for the faithful performance of the contract and security for the payment of all persons performing labor and furnishing materials in connection with this contract. The sureties of all bonds shall be such surety company or companies as are approved by the Owner and as

are authorized to transact business in Guam. The bonds must be approved by the Owner prior to execution of the formal contract.

#### **10. Cancellation of Award**

The Owner reserves the right to cancel the award of any contract at any time before the execution of same.

### **IV. DUTIES OF CONTRACTING OFFICER AND CONTRACTOR SAFETY MEASURES**

#### **1. Authority of Contracting Officer**

The Contracting Officer shall give all orders and directions contemplated under this contract and specifications relative to the execution of the work. The Contracting Officer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid or under this contract and shall decide all questions which may arise in relation to paid work and the construction thereof. The Contracting Officer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Contracting Officer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected in any manner or to any extent by such question.

The Contracting Officer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute.

Any difference or conflicts in regard to their work which may arise between the Contractor under this contract and other Contractors performing work for the Owner shall be adjusted and determined by the Contracting Officer.

#### **2. Contractor's Obligations**

The Contractor shall, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract within the time herein specified in accordance with the plans and drawings of the work covered by this contract and any and all supplemental plans and drawings, and in accordance with the

directions of the Contracting Officer as given from time to time during the progress of the work. He alone shall be responsible for the safety, efficiency and adequacy of his plant, appliances and methods, and for any damage which may result from their failure or their improper construction, maintenance or operations. The Contractor shall observe, comply with and be subject to all terms, conditions, requirements, and limitations of the contract and specifications and shall do carry on and complete the entire work to the satisfaction of the Contracting Officer and the Owner.

### **3. Superintendence by Contractor**

The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress with authority to act for him.

### **4. Subcontracts**

(a) Nothing contained in the specifications or drawings shall be construed as creating any contractual relationship between any subcontractor and the Owner. The diffusion or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be as fully responsible to the Owner for the acts and omissions of subcontractors and of persons employed by them, as he is for the acts and omissions of persons directly employed by him.

(c) The Contractor shall be responsible for the coordination of the trades, subcontractors, and material men engaged in his work.

(d) The Contractor shall, without additional expense to the Owner, utilize the services of specialty subcontractors on those parts of the work which are specified to be performed by specialty subcontractors.

(e) The Owner will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.

(f) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work including waiver of mechanics liens to bind subcontractors by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the

Owner any exercise over the Contractor under any provisions of the contract documents.

## **5. Subletting**

Subletting part of the work is permitted. However, bidder must note that subletting in excess of the following is not allowed:

(a) Where the subletting is for both labor and material, total cost of sublet work shall not exceed 49% of the contract amount.

(b) Where subletting is for labor only, sublet work cost shall not exceed 20% of the total contract amount. Information concerning subcontracts must form a part of the bid documents and shall be submitted on standard "Subcontract" information form.

## **6. Assignments**

The Contractor shall not assign the whole or any part of this contract or any monies due or to become due hereunder without the written consent of the Owner and of all the sureties executing any bonds on behalf of the Contractor in connection with said contract. In case the Contractor assigns the whole or any part of said contract or assigns all or any part of any monies due or to become due under said contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Contractor or otherwise shall be subject to all of the terms and conditions of said contract or supplemental thereto, the rights and remedies of the Owner thereunder or arising by operation of the law and to the liens of all persons, firms, and corporations for services rendered or materials supplied in connection with the performance of said contract.

## **7. Equal Opportunity**

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, age, economic status, or national origin. The Contractor will take affirmative action to insure that qualified applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, age, economic status, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The

Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, age, economic status, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

#### **8. Hiring of Apprentices**

The Contractor shall hire for performance of work under this contract apprentice(s) to be employed in the performance of work under this contract if H2 workers are employed in accordance with Executive Order No. 2014-06 and 2014-09.

#### **9. Minimum Wage Rate**

All persons employed on this project shall be paid not less than minimum wage applicable to the corresponding skill or craft as determined by the Department of Labor, Government of Guam. Prevailing wage rates of Department of Labor, Government of Guam are attached herewith and shall be deemed a part of the contract documents.

### **WAGE AND BENEFITS DETERMINATION FOR SERVICES**

Offerors submitting proposals must pay employees providing services procured through this IFB in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam. 5 GCA § 5801 and § 5802, as applicable. The Wage Determination for Guam and the Northern Mariana Islands also can be found on the U.S. Department of Labor's website: <http://www.wdol.gov>.

Offerors submitting proposals must provide health and similar benefits for employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by U.S. Department of Labor and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee. 5 GCA § 5802.

**For the latest U.S. Department of Labor Wage Determination: Guam, Northern Marianas Islands, visit <http://www.wdol.gov/wdol/scafiles/std/05-2147.txt>**

#### **10. Laws, Permits and Regulations**

(a) Building permit for the project shall be secured by the Contractor. Building permit and plan checking fees shall be paid for by the Contractor.

(b) The Contractor shall pay all fees and charges for connection to outside service and use of property other than the site of the work for storage of materials or other purposes.

(c) The Contractor shall comply with all laws, ordinances, regulations and building code requirements applicable to work hereunder unless in conflict with contract requirements. If the Contractor ascertains at any time that any requirement of this contract is a variance with applicable laws, ordinances, regulations, or building code requirements, he shall promptly notify the Contracting Officer and any necessary adjustment of the contract shall be made as specified under Changes in Work.

#### **11. Contractor's and Subcontractor's Insurance**

(a) The Contractor shall not commence work under this contract until he has obtained all the insurance required hereunder and such insurance has been approved by the Owner. The Contractor shall not allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

(b) Workman's Compensation and Employer's Liability Insurance-The Contractor shall take out and maintain during the life of this contract the statutory Workman's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this contract and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Workman's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work.



(c) Bodily Injury Liability and Property Damage Liability Insurance-The Contractor shall take out and maintain during the life of this contract such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him and any subcontractor performing work covered by this contract from claims for damages for personal injury including accidental death, as well as from operations under this contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than:

(1) Bodily Injury Liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) per person for injuries including wrongful death and in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) for injuries including wrongful death resulting from one accident.

(2) Property Damage Insurance in an amount not less than Fifty Thousand Dollars (\$50,000.00) for damages resulting from any one accident and in an amount not less than One Hundred Thousand Dollars (\$100,000.00) for damages resulting from all accidents.

(d) Owner's Protective Liability Insurance - The Contractor shall take out and furnish to the Owner and maintain during the life of this contract complete Owner's protective liability insurance in amounts as specified in paragraph 11 (c), above for bodily injury liability insurance and for property damage liability insurance.

(e) Fire Insurance - The Contractor shall insure the building or other work included in this contract against loss or damage by fire and against loss or damage covered by the standard extended coverage insurance endorsement, in an insurance company or companies acceptable to the Owner, the amount of the insurance at all times to be at least equal to the amount paid on account of work and materials and plus the value of work or materials furnished or delivered but not yet paid for by the Owner. The policies shall be in the names of the Owner and the Contractor, and their interests may appear. Certificates of the insurance company as to the amount and type of coverage, terms of policies, etc., shall be delivered to the Owner before monthly partial payments are made.

## **12. Supplemental to Contractor's and Subcontractor's Insurance (Not Applicable)**

(a) Flood Hazard Insurance - The Contractor during the life of this contract shall secure and maintain Flood Hazard Insurance in the amount equivalent to 100

percent (100%) of the contract amount for all damages. The policies shall be in the name of the Owner and the Contractor.

A certificate of the insurance company as to amount and type of coverage, terms of policies, etc., shall be delivered to the Owner before commencing work.

**13. Accident Prevention**

(a) Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery equipment and all hazards shall be observed. Machinery equipment and all hazards shall be guarded or eliminated in accordance with the safety provisions of the latest edition of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America to the extent that such provisions are not in contravention of applicable laws.

(b) Should typhoon warnings be issued, the Contractor shall take every practicable precaution to minimize damage and/or danger to persons, to the work, and to the adjacent property. These precautions shall include closing all openings, removing all loose materials, tools and/or equipment from exposed locations, and removing or securing scaffolding and all other temporary work.

**14. Protection of Work and Property**

The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work and that of adjacent property (as provided by law and the contract documents) from damage. All passageways, guard fences, lights and other facilities required for protection by laws and regulations and local conditions must be provided and maintained.

**15. Responsibility of Contractor to Act in Emergency**

In case of an emergency which threatens loss of injury or property and/or safety of life, the Contractor shall act, without previous instructions from the Owner or Contracting Officer, as the situation may warrant. He shall notify the Contracting Officer thereof immediately thereafter of any compensation claimed by the Contractor. Substantiating documents regarding expenses shall be submitted to the Owner through the Contracting Officer and the amount of compensation shall be determined by agreement or arbitration.

## **16. Mutual Responsibility of Contractors**

If the Contractor or any of his subcontractors or employees cause loss or damage to any separate contractor on the work, the Contractor agrees to settle with such separate contractor by agreement, if he will so settle. If such separate Contractor sues the Owner on account of any loss so sustained, the Owner shall notify the Contractor who shall indemnify and save harmless the Owner against any expenses or judgment arising therefrom.

## **17. Use of Premises and Removal of Debris**

The Contractor expressly agrees to undertake at his own expense

- (a) to take every precaution against injuries to persons or damages to property;
- (b) to comply with the regulations governing the operation of premises which are occupied and to perform his contract in such a manner as not to interrupt or interfere with the operation of other facilities;
- (c) to perform any work necessary to be performed after regular working hours or on Sundays or legal holidays without additional expense to the Owner;
- (d) to store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other Contractors;
- (e) to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- (f) to frequently clean up all refuse, rubbish, scrap materials and debris caused by his operation so that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- (g) to effect all cutting, fitting, or patching of his work required to make the same conform to the plans and specifications, and except with the consent of the Contracting Officer, not to cut or otherwise alter the work of any contractor;
- (h) before final payment to remove all surplus materials, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, to put the site in a neat,

orderly condition and to thoroughly clean and leave reasonably dust free all furnished surfaces.

**18. Obstructions**

The Contractor shall at his own expense remove all obstructions, the removal of which shall be necessary for the proper reception, performance, construction, installation and completion of all work under this contract.

**19. Site of Contractor's Operations**

The Contractor shall confine all construction operations within the vicinity of the site and shall arrange his work so that all construction materials and equipment are placed in such manner and location that there may be a minimum of interference or inconvenience inflicted upon the public and employees of the Government.

**20. Barricades**

The Contractor shall erect, install and maintain all temporary public walks, warning signs, barricades or other protective means in and around the site as deemed necessary or as may be ordered by the Contracting Officer for the effective protection of the public from injury and shall be held strictly liable for their safety.

**21. Electrical Energy**

The Contractor shall make all necessary applications, pay all fees and charges, obtain necessary permits and provide and maintain his own electrical power and light as required and necessary in the progress of any branch of the work. He shall provide all temporary wiring necessary.

**22. Water**

The Contractor shall make all necessary applications, pay all fees and charges, and obtain necessary permits for construction of temporary water required for use on this project. The nearest available source of water tap shall be verified by the Contractor. The Contractor shall be responsible for all expenses required for conveying water to the site from the available nearest source.

## **23. Signs**

The Contractor shall erect a sign at the project site at his own expense. The location of sign shall be as directed by the Contracting Officer. Size of signs, lettering, and other pertinent data that should appear on the sign will be furnished by the Contracting Officer to the Contractor.

## **V. QUALITY OF WORK**

### **1. Engineering and Layout**

(a) The Contractor shall provide competent engineering services to execute the work in accordance with the contract requirements. He shall verify the figures shown on the survey and approach drawings before undertaking any construction work and shall be responsible for the accuracy of the finished work.

(b) The Owner has established or will establish such general reference points as will, in his judgment, enable the Contractor to proceed with the work. If the Contractor finds that any previously established reference points have been destroyed or displaced, he shall promptly notify the Owner.

(c) The Contractor shall protect and preserve the established bench marks and monuments and shall make no changes in location without the written approval of the Owner. Any of them which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall be subject to prior approval by the Owner, be replaced and accurately located by the Contractor.

### **2. Shop Drawings, Materials and Workmanship**

Unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new. All workmanship shall be first class and by persons qualified in the respective trades.

#### **Shop Drawings**

(a) The Contractor shall submit, for the approval of the Contracting Officer, shop and setting drawings and schedules required by the specifications or that may be requested by the Contracting Officer and no work shall be fabricated by the Contractor, save at his own risk, until such approval has been given.

(b) Drawings and schedules shall be submitted in quadruplicate (unless otherwise specified) accompanied by letter of transmittal which shall give a list of

the numbers and dates of the drawings submitted. Drawings shall be complete in every respect and bound insets.

(c) The Contractor shall submit all drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and rechecking.

(d) The drawings submitted shall be marked with the name of the project, numbered consecutively and bear the stamp of approval of the Contractor as evidence that the drawings have been checked by the Contractor. Any drawings submitted without this stamp of approval will not be considered and will be returned to the Contractor for resubmission. If the shop drawings show variations from the requirements of the contract because of standard shop practice or other reasons, the Contractor shall make specific mention of such variation in his letter of transmittal in order that if applicable, suitable action may be taken for proper adjustment. Otherwise, the Contractor will not be relieved of the responsibility for executing the work in accordance with the contract even though such shop drawings have been approved.

(e) If a drawing as submitted indicates a departure from the contract requirements which the Contracting Officer finds to be in the interest of the Owner and to be so minor as not to involve a change in the contract price or time for performance, he may approve the drawings.

(f) The approval of shop and setting drawings will be general and, except as otherwise provided in paragraph 2 (e), shall not be construed (1) as permitting any departure from the contract requirements; (2) as relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist; (3) as approving departures from additional details or instructions previously furnished by the Contracting Officer.

### **3. Standards**

#### **BUY AMERICAN PRODUCT:**

Buy American requirement – all iron, steel, & manufactured goods and equipment used in project are produced in the United States

(a) Any material specified by reference to the number, symbol or title of a specific standard, such as a commercial standard, a Federal specification, a trade association standard or other similar standard, shall comply with the requirements in the latest revision thereto in effect on the date of Invitation for Bids, except as limited to type, class or grade or modified in such reference.

(b) The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in the specifications. These standards are not furnished to bidders for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements. The Contracting Officer will furnish, upon request, information as to how copies of such standards may be obtained.

(c) Reference in the specifications to any article, device, product, material, fixture, form, or type of construction by name, make or catalog number shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition; and the Contractor, in such cases, may at his option use any article, device, product, material, fixture, form of type of construction which in the judgment of the Contracting Officer expressed in writing is equal to that specified.

#### **4. Samples**

(a) The Contractor shall furnish for the approval of the Contracting Officer any samples required by the specifications or that may be required by the Contracting Officer of any and all materials or equipment he proposes to use and shall prepay all shipping charges on the samples.

(b) No samples are to be submitted with bids.

(c) No materials or equipment of which samples are required to be submitted for approval shall be used on the work until such approval has been given by the Contracting Officer, save only at the Contractor's risk and expense.

(d) Each sample shall have a label indicating the material represented its place of origin and the names of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be so marked as to indicate where the materials represented are required by the drawings or specifications.

(e) A letter in duplicate submitting each shipment of samples shall be mailed under separate cover by the Contractor and contain a list of the samples, the name of the building or work for which the materials are intended, and the brands of the materials and names of the manufacturers.

(f) The approval of any sample shall be only for characteristics or for the named in such approval and no other. No approval of a sample shall be taken in

itself to change or modify any contract requirement. When a material has been approved, no additional sample of that material will be considered and no change in brand or make will be permitted. Approval of samples of hardware in good condition may be suitably marked for identification and used in the work.

(g) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider under this contract any further samples of the same brand or make of that material.

(h) Test samples as the Contracting Officer may deem necessary will be procured from the various materials or equipment delivered by the Contractor for use in the work. If any of these test samples fail to meet the specifications requirement, any previous approvals will be withdrawn and such materials or equipment shall be subject to removal and replacement by the Contractor with materials or equipment meeting the specification requirements, or at the discretion of the Owner, the defective materials and equipment may be permitted to remain in place subject to a proper adjustment of the contract price. The cost of the tests will be borne by the Owner except where laboratory tests as hereinafter specified are required by the specifications.

## **5. Laboratory Tests**

(a) Any specified laboratory tests of materials and finished articles to be incorporated in the work shall be made by bureaus, laboratories or agencies approved by the Contracting Officer, and the reports of such tests shall be submitted to the Contracting Officer. The cost of the testing shall be paid for by the Contractor.

## **6. Methods**

The Contractor shall use proper and efficient methods and appliances for the performance of all the operations connected with work embraced under these specifications, drawings and contract to secure a rate of progress which will secure completion of the work within the time specified. If, at any time before commencement of work, or during the progress thereof, such methods, equipment or appliances are inefficient or inappropriate for securing said quality of work or said rate of progress, the Contracting Officer may order the Contractor to increase their efficiency or to improve their character, and the Contractor must conform to such order. The failure of the Contracting Officer to demand such increases of efficiency or improvement shall not relieve the Contractor or his sureties from the obligations to secure such quality of work and said rate of progress and the completion of the work as required herein.



## **7. Labor and Materials**

The Contractor shall furnish all labor, materials and equipment for the execution of the work according to the drawings, specifications and contract, and where no specifications are contained therein for whatever may be necessary, shall do all that may be termed ordinary, customary or essential to a job to be well and reliably completed. This includes concealment of all pipes and other rough items of installation if not clearly so shown on the drawings in a manner acceptable to the Contracting Officer. Structural safety shall not be impaired by such concealment. Work not particularly detailed, marked or specified shall be of equal quality as similar parts that are detailed, marked or specified. All material finished for and used in the job shall be of kind and grade specified and where not specifically called for at least of customary standard grade. All work shall be executed in accordance with their trades. Full structural safety is essential and the Contractor guarantees to accomplish same for the entire work.

## **8. Guarantee of Work**

(a) Except as otherwise specified all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion of the contract or from full occupancy of the building by the Owner, whichever is earlier.

(b) If within any guarantee period, repairs or changes are required in connection with guaranteed work which, in the opinion of the Contracting Officer, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract, the Contractor shall promptly upon receipt of notice from the Owner and without expense to the Owner:

(1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein; and

(2) Make good all damages to the building or site or equipment or contents thereof which, in the opinion of the Contracting Officer, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the **terms of the contract**.

(c) In any case wherein fulfilling the requirements of the contract or of any guarantee embraced in or required thereby the Contractor disturbs any work guaranteed under another contract, he shall restore such disturbed work to a

condition satisfactory to the Contracting Officer and guarantee such restored work to the same extent as it was guaranteed under such other contract.

(d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.

(e) All special guarantees applicable to definite parts of the work shall be stipulated in the specifications or other papers forming a part of the contract and shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

## **9. Defective Work**

No work or material which may be defective in construction or quality or deficient in any of the requirements of the drawings and specifications will be considered accepted as a consequence of the failure of the Contracting Officer or the inspectors to discover or to point out said defects or deficiencies during the construction; nor will the presence of inspectors on the work relieve the Contractor from the responsibility of securing the quality and progress of work as required by these specifications.

Any defective work that may be discovered before the completion of the work or within such time as required by the bond shall be replaced by work and materials that shall conform to the spirit and intent of the drawings, specifications and contract.

The fact that the Contracting Officer or his representatives may have overlooked defective work shall not constitute the acceptance of work. NO PAYMENT WHETHER PARTIAL OR FINAL SHALL BE CONSTRUED TO BE AN ACCEPTANCE OF DEFECTIVE WORK OR IMPROPER MATERIALS.

The Contracting Officer may at any time by order given in writing stop any work not being done according to drawings and specifications and any order so given shall not in any way relieve the Contractor from completing his contract and shall not in any way terminate, cancel or abrogate the contract or any part thereof, and the Government of Guam shall not in any way be responsible for the delay due to stopping the work as aforesaid.

## **VI. INSPECTION OF WORK**

### **1. Access to the Work**

The Contracting Officer and his representatives shall have access at all times to the work for inspection whatever it is in preparation or progress and the Contractor shall provide proper facilities for such access and inspection.

### **2. Inspectors**

Inspectors may be placed by the Contracting Officer to supervise each and every subdivision of the work or any parts or process thereof. The Contracting Officer and the inspectors shall have free access to all parts of the work at all times and shall be given every facility, information and means of thoroughly inspecting the work done and the materials used or to be used.

The inspectors shall at all times be free to perform their duties and any intimidation of any inspector by the Contractor or the employees thereof shall be sufficient reason, if the Owner shall so decide, to annul the contract.

### **3. As-Built Drawings**

A contract set of drawings shall be maintained at the site with all changes or deviations from the original drawings neatly marked thereon in brightly contrasting color. This shall be a separate set of drawings not used for construction purposes which shall be kept up to date as the job progresses and shall be made available for inspection by the Contracting Officer at all times. Upon completion of the contract this set of drawings shall be delivered to the Contracting Officer.

### **4. Inspection**

(a) All materials and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination and testing by the Contracting Officer at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. The Contracting Officer shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected, and rejected materials shall be satisfactorily replaced with proper materials and the Contractor shall promptly segregate and remove the rejected materials from the premises. If the Contractor fails to proceed at once with the replacement of rejected materials and/or the correction of defective

workmanship, the Owner may, by contract or otherwise, replace such materials and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in paragraph 5 of Section VII, Time for Performance, the Contractor and surety being liable for any damage to the same extent as provided in said paragraph 16 for termination thereunder.

(b) The Contractor shall furnish promptly, without additional charge, all reasonable facilities, labor and materials necessary for the safe and convenient inspection and tests that may be required by the Contracting Officer. All inspections and tests shall be performed in such manner as not to unnecessarily delay the work. Special, full-size and performance tests shall be as described in the specifications. The Contractor shall be charged with any cost of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor.

(c) Should it be considered necessary or advisable by the Contracting Officer at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor and materials. If such work is found to be defective in any material respect due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements involved in the examination and replacement, the cost of conducting the test plus 15 percent shall be allowed the Contractor and he shall in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

## **5. Final Inspection**

When the work is substantially completed the Contractor shall notify the Owner, in writing, that the work will be ready for final inspection and test on a definite date which shall be stated in such notice. The notice shall be given at least ten (10) calendar days in advance of said date and shall be forwarded through the Contracting Officer who will attach his endorsement as to whether or not he concurs in the Contractor's statement that the work will be ready for final inspection or tests on the date given but such endorsement shall not relieve the Contractor of this responsibility in the matter.

## **VII. TIME FOR PERFORMANCE**

### **1. Prosecution of the Work**

The Contractor agrees that said work shall be prosecuted regularly, diligently and without interruption at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed by and between the Contractor and the Owner that the time for completion of the same takes into consideration the average climatic range and usual industrial conditions prevailing in the locality.

### **2. Suspension of Work**

- (a) Suspension for Convenience. - The Contracting Officer or the head of a Purchasing Agency may order the contractor in writing to suspend, delay or interrupt all or any part of the work for such period of the time as the Contracting Officer or the Head of a Purchasing Agency may determine to be appropriate for the convenience of the territory.
- (b) Adjustment of Cost - If the performance of all or any parts of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer or the Head of a Purchasing Agency in the administration of this contract, or by the failure of the Contracting Officer or the Head of a Purchasing Agency to act within the time specified in the contract ( or if no time specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused by such unreasonable suspension, delay, or interrupted and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent:
  - (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor; or
  - (2) for which an adjustment is provided for or excluded under any other provision of this contract.
- (c) Time Restriction on Claim - No claim under this clause shall be allowed:
  - (1) For any costs incurred more than twenty (20) days before the contractor shall have notified the Contracting Officer or the Head of a Purchasing Agency in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from

suspension order); and

(2) unless the claim is asserted in writing as soon as practicable after the termination of such suspension , delay, interruption, but no later than the date of final payment under the contract.

(d) Adjustments of Price - Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

### 3. Termination for Convenience

(1) Termination - The Contracting Officer may, when the interest of the territory so require, terminate this contract in whole or in part, for the convenience of the territory. The Contracting Officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated becomes effective.

(2) Contractor's Obligations - The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination, the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Contracting Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the territory. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

(3) Right to Construction and Supplies - The Contracting Officer may require the contractor to transfer title and deliver to the territory in the manner and to the extent directed by the Contracting Officer:

(a) any completed construction; and

(b) such partially completed construction, supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawing, information, and contract rights (hereinafter called construction material) as the Contractor has specifically produced or specially acquired for the performance of the terminated part of the contract.

The Contractor shall protect and preserve property in the possession of the Contractor in which the territory has an interest. If the Contracting Officer does not exercise this right, the Contractor shall use best efforts to sell such construction, supplies, and construction materials in accordance with the standards of 14 GCA §2706 (UCC). (See end of Subsection 6101 (10)(d) for code quotation.) This in no way implies that the territory has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation

- (a) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations, bearing of such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Contracting Officer may pay the Contractor, if at all, an amount set in accordance with subparagraph (c) of this Paragraph.
- (b) The Contracting Officer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required by §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the territory, the proceeds of any sales of construction materials under Paragraph (3) of this clause, and the contract price of the work not terminated.
- (c) Absent complete agreement under Subparagraph (b) of this paragraph, the Contracting Officer shall pay the Contractor the following amounts, provided payments under Subparagraph (b) shall not duplicate payments under this Paragraph:
  - i. with respect to all contract work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:  
the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be

allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

- ii. cost of settling and paying claims arising out of the termination of subcontractors or orders pursuant to Paragraph (2) of this clause. These cost must not include cost paid in accordance with Subparagraph (c)(i)(A) of this Paragraph.
- iii. the reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the Contractor under this Paragraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of any sales of construction materials under Paragraph (3) of this clause, and the contract price of work not terminated.
- iv. Cost Claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

(5). Remedies Clause

Any dispute arising under or out of this contract is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

**3. Climatic Conditions**

(a) When so ordered by the Contracting Officer, the Contractor shall suspend any work that may be subject to damage by climatic conditions.

(b) Contract Completion Time. The allowable work days for this contract were calculated after allowing for the following number of lost days in each month. Time extension on account of inclement weather will be allowed only if the daily report of the Contracting Officer's inspector indicates lost days beyond the limits shown below. Time extension on account of inclement weather on



Saturday and Sunday shall be granted only if the Contractor confirms in writing at least seven (7) calendar days in advance his intention to work on weekends.

Month	Non-Working Days	Month	Non Working Days
January	07	July	10
February	05	August	11
March	05	September	12
April	04	October	10
May	05	November	07
June	06	December	07

#### **4. Progress Report**

The Contractor shall submit monthly progress report in triplicate to the Contracting Officer briefly setting forth work accomplished.

#### **5. Owner's Right to Stop Work or Terminate Contract, Delays, Damages**

**(a) If:**

(1) The Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors;

(2) A receiver or liquidator shall be appointed for the Contractor or for any of his property and shall not be dismissed within 20 calendar days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said 20 calendar days;

(3) The Contractor shall refuse or fail, after Notice of Warning from the Contracting Officer, to supply enough properly skilled workmen or proper materials; or

(4) The Contractor shall refuse to prosecute the work or any part thereof with such diligence as will insure its completion within the period herein specified (or any duly authorized extension thereof) or shall fail to complete the work within said period, or;

(5) The Contractor shall fail to make payments as specified to persons supplying labor or materials for the work, or;

(b) Non-Performance or Delay, Damages for Delay, Time Extensions

(1) **Default.** If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof fails to complete said work within such time, or commits any other substantial breach of this contract, and further fails within fourteen (14) days after receipt of written notice from the Contracting Officer to commence and continue correction of such refusal or failure with diligence and promptness, the Contracting Officer may, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event the territory may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the territory resulting from the Contractor's refusal or failure to complete the work within the specified time.

(2) **Liquidated Damages Upon Termination.** If fixed and agreed liquidated damages are provided in the contract, and if the territory so terminates the Contractor's right to proceed, the resulting damage will consist of such reasonable time as may be required for final completion of the work.

(3) **Liquidated Damages in Absence of Termination.** If fixed and agreed liquidated damages are provided in the contract, and if the territory does not terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(4) **Time Extension.** The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(a) The delay in the completion of the work arises from causes such as; acts of

God; acts of the public enemy; acts of the territory, and any other territorial entity in either a sovereign or contractual capacity; acts of another Contractor in the performance of a contract with the territory; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to cause similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the Contractor furnished to the Contracting Officer proof that the Contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations' and

- (b) The Contractor, within ten days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Office in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Contracting Officer, the findings of fact justify such an extension.

- (5) **Erroneous Termination for Default.** If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the right and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the territory, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstance, this contract does not contain a clause providing for termination for convenience of the territory, the contract shall be adjusted to compensate for such termination and the contract modifies accordingly.

- (6) **Additional Rights and Remedies.** The rights and remedies of the territory provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## **VIII. CLAIMS, PAYMENTS**

### **1. Contractor's Title to Materials**

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies for which he accepts partial payments.

### **2. Claims**

The Contractor agrees whenever required to do so by the Owner to furnish satisfactory evidence that all persons, firms or corporations who have done work or supplied materials under these specifications have been paid or have been duly notified of the completion of the work and have been secured to their satisfaction before the said Contractor shall be entitled to final payment.

In case such evidence is not furnished or in case any claim is filed with the Owner or any suit or action is instituted against the Owner as defendant or garnishes or against the Contractor in connection with the work performed or to be performed under the drawings, specifications or contract, the Owner may retain from the money due or to become due to the Contractor such sum or sums as in the judgment of the Contracting Officer will fully protect the Owner from loss, charge or expense by reason of such claim, suit or action. The Owner without prejudice to any other and further rights, may make any and all deductions for any loss, charge or expense sustained by it to which it would be entitled under the contract specifications or bond, or otherwise before paying over the balance of the sum or sums retained as aforesaid, if any, to the Contractor, his creditor, or any successful claimant against the Contractor.

No payment made or retained under this contract shall be held to relieve the Contractor and/or his sureties from his and/or their obligations under this bond to hold harmless and indemnify the Owner or its agents from any and all loss, charge or expense by reason of any unpaid claim whatsoever.

### **3. Claims Based On The Contracting Officer or the Head of a Purchasing Agency's Actions or Omissions**

- (1) Notice of Claim.** If any action or omission on the part of the Contracting Officer or the head of the Purchasing Agency or designee of such officer, the requiring performance changes within the scope of the contract constitute the basis for a claim by the Contractor for additional compensation, damages, or

an extension of time for completion, damages, or an extension of time for completion, the Contractor shall continue with the performance of the contract in compliance with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced any claim or additional compensation damages, or an extension of time for completion; provided;

(a) The Contractor shall have given written notice to the Contracting Officer the head of the Purchasing Agency, or designee of such officer:

- (i) Prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of such action or omission;
- (ii) Within 30 days after the Contractor knows of the occurrence of such action or omission, if the Contractor did not have such knowledge prior to the commencement of the work; or
- (iii) Within such further time as may be allowed by the Contracting Officer in writing.

This notice shall state that the Contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The Contracting Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Contracting Officer or designee of such officer.

(b) The notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and

(c) The Contractor maintains and, upon request, makes available to the Contracting Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) **Limitations of Clause.** Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any territorial officers and any Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(3) **Adjustments of Price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Contract.

**4. Waiver of Mechanics Liens**

Contractor waives any right that he now has or in the future may have to claim a mechanic's lien against the real property or improvements thereon which are the subject of this contract, to secure payment for labor and materials furnished or to be furnished by him under this contract.

**5. Schedule of Values**

Within three days after receipt of notice to proceed, the Contractor shall submit for approval a schedule of the estimated values of the main branches of the work totaling the amount of the contract. The format to be used will be furnished by the Contracting Officer. These values will be used for determining partial payments and as a basis for changes in work as outlined in the General Conditions.

**6. Taxes**

The Contractor shall, without additional expense to the Owner, pay all applicable taxes. The successful bidder will be required to comply with the applicable sections of Titles 11 and 21 of the Guam Code Annotated, as regards to licenses and taxes. In addition to the general contractor's liability, subcontractors are also subject to these provisions. Subcontractors are also required to possess Guam Service Licenses. The Contractor will be required to submit a list of his subcontractors and the monetary amount of each subcontract.

**7. Materials, Services and Facilities**

It is understood that except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.

**8. Patents**

The Contractor shall hold and save the Owner and his officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and

expenses, for or on account of any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the contract documents.

**9. Payment by Contractor**

The Contractor shall pay;

(a) for all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered;

(b) for all materials, tools, and other expendable equipment to the extent of 90 percent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools and equipment are delivered at the site of the project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used;

(c) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors, to the extent of such subcontractor's interest therein.

**10. Extras**

Except as otherwise herein provided, no charge for any extra work or materials will be allowed unless the same has been ordered in writing by the Owner and either the price is stated in such order or a definite acknowledgment is made that a change in price is involved subject to later determination.

**11. Differing Site Conditions (Please refer to Alternative "A" for this project)**

(Alternative A)

(1) Notice - The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer or the Head of a Purchasing Agency of:

(a) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

(b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

- (2) Adjustment of Price or Time for Performance - After receipt of such notice, the Contracting Officer or the Head of a Purchasing Agency shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.
- (3) Timeliness of Claim - No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in this clause; provided, however, that the time prescribed therefor may be extended by the Contracting Officer or the Head of a Purchasing Agency in writing.
- (4) No Claim After Final Payment - No claim by the Contractor for an adjustment thereunder shall be allowed if asserted after final payment under this contract.
- (5) Knowledge - nothing contained in this clause shall be grounds for an adjustment in compensation if the Contractor had actual knowledge of the existence of such conditions prior to the submission of bids.

(Alternative B)

The Contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the Contractor's own cost and expense, anything in this contract to the contrary notwithstanding.

## **12. Price Adjustment**

- (1) Any adjustment in contract pursuant to clauses in this contract shall be made in one or more of the following ways:



- (a) by agreement on fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (b) by unit prices specified in the contract or subsequently agreed upon;
  - (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
  - (d) in such other manner as the parties may mutually agree; or
  - (e) in the absence of an agreement between parties, by a unilateral determination by the Contracting Officer or the Head of a Purchasing Agency of any cost attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Contracting Officer or the Head of a Purchasing Agency in accordance with generally accepted accounting principles with applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 GCA (Legal and Contractual Remedies) of the Guam Procurement Act.
- (2) Submission of Cost or Pricing Data - The Contractor shall submit cost or pricing data for any price adjustments subject to the provisions of §3118 (Cost or Pricing Data) of the Guam Procurement Regulations.

### **13. Changes in Work**

- (a) The Owner may at any time, by a written order, and without notice to the sureties, make changes in the drawings and specifications of this contract and within the general scope thereof. However, no change will be made which increases the total contract price without notice to sureties. In making any change, the charge or credit for the change shall be determined by the following method:
- (1) The actual cost of:
- I. Labor, including foreman
  - II. Materials entering permanently into the work
  - III. Equipment rental cost during time used on extra work
  - IV. Power and consumable supplies
  - V. Insurance
  - VI. To the above cost there shall be added a fixed fee to be agreed upon, but not to exceed 15% of the net cost. This fee shall be compensation to cover the cost of supervision, overhead, bond, profit and other general expenses.

(b) The Contractor shall, when required by the Owner, furnish to the Owner an itemized breakdown of the quantities and prices used in computing the value of any change that might be ordered.

(c) In figuring changes, instructions for measurement of quantities set forth in the specifications shall be followed.

(d) If any part of the work as installed is at variance with the contract requirements, the Owner may, if he finds it to be in his interest, allow all or any part of such work to remain in place subject to a proper adjustment in the contract price.

#### **14. Payment to Contractor**

(a) Unless otherwise provided in the specifications, the Owner will make partial payments to the Contractor after receipt and approval of the request for partial payment covering the work performed during the proceeding calendar month. No payments for installed materials on the site will be made unless such request is accompanied by a receipt or certification showing that the Contractor has made payment in full for such work done. In preparing such estimates, preparatory work done shall not be considered for payment. Materials delivered to site shall be considered for payment subject to the following conditions:

(1) The material shall be kept in a safe and enclosed warehouse or area located on site with restricted access.

(2) The receipt and issue of material must be controlled by a stock card kept in the warehouse.

(3) Insurance coverage required under Section 11, Chapter IV of the General Conditions shall include insurance of such material and shall include theft insurance.

(4) Request for payment must be accompanied with certification and receipts indicating the cost of material and showing that Contractor has made full payment for such material.

(b) In making such partial payments there shall be retained ten percent (10%) of the estimated amount until final completion and acceptance of all work covered by the contract. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize payment in full of each progress payment for work performed

beyond the 50 percent stage of completion. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount.

(c) All materials and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payment have been made, or the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the contract.

(d) Release of Claims - Neither the final payment or any part of the retained percentage shall become due until the Contractor shall deliver to the Owner through the Contracting Officer a complete release of all claims against the Owner arising under and by virtue of this contract, including claims of all subcontractors and suppliers of either materials or labor, other than such claims, if any, as may be specifically excepted by the Contractor.

(e) Certificate of Completion - Upon completion and acceptance of all work whatsoever required and the release of all claims against the Owner as specified, the Contracting Officer shall file a written certificate with the Owner and with the Contractor as to the entire amount of work performed and compensation earned by the Contractor, including extra work and compensation therefore.

(f) Final Payment - Within thirty (30) calendar days after the filing of such certificate of completion, the Owner shall pay to the Contractor the amount therein stated less all prior payments and advances whatsoever to or for the amount of the contract. All prior estimates and payments including those relating to extra work shall be subject to correction by this payment which is throughout this contract called Final Payment.

(g) Acceptance of Final Payment Constitutes Release - The acceptance by the Contractor of the final payment shall be and shall operate as a release to the Owner of all claims and of all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work, excepting the Contractor's claims for interest upon the final payments if this payment be improperly delayed. No payments, however, final or otherwise shall operate to release the Contractor or his sureties from any obligations under this contract or the performance and payment bonds.

## **IX. MISCELLANEOUS**

### **1. Prohibited Interests**

(a) No member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(b) No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner authorized to exercise any legislative, executive supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

### **2. Mandatory Disputes Clause**

1.1 The Owner and the Contractor agree to attempt resolution of all controversies which arise under, or are virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request the Owner in writing to issue a final decision within six days after receipt of the written request. If the owner does not issue a written decision within six days after written request for final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as though the Owner had issue a decision adverse to the Contractor.

1.2 The Owner shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

1.3 The Owner's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision.

1.4 This subsection applies to appeals of the Owner's decision on the a dispute. For money owed by or to the Owner under this Agreement, the Contractor shall appeal the decision in accordance with the Owner Claims Act by initially filing a

claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by the Owner or from the date when a decision should have been rendered. For all other claims by or against the Owner arising under this Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of the Owner. Appeals to the Office of the Public Auditor must be made within sixty days of the Owner's decision or from the date the decision should have been made.

1.5 The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

1.6 The Contractor shall comply with the Owner's decision and proceed diligently with performance of the Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Agreement, except where the Contractor claims a material breach of this Agreement by the Owner. However, if the Owner determines in writing that continuation of services under this Agreement is essential to the public's health or safety, then the Contractor shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by the Owner.

-END OF GENERAL CONDITIONS-

## SPECIAL PROVISIONS

1. General Intention.

It is the declared intention and meaning to provide and secure the design and construction of **“Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build), Project no.: 470-5-1070-F-BAR”**.

2. Contractor.

The Contractor and each and every subcontractor shall read the entire Bid Documents and by the act of submitting a bid, shall be deemed to have accepted all conditions contained therein.

3. Standards.

The standards referenced in this specification (including addenda, amendments and errata listed) shall govern in all cases where the references thereto are made. In case of difference between the referenced standards and its accompanying drawings, accompanying drawings shall govern to the extent of such difference, otherwise the referenced standards shall apply. Extra care shall be exercised to refer in requests for quotations in orders and in subcontracts to all modifications thereof.

4. Time for Completion.

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning, rate of progress and the time for completion of the work to be done hereunder are essential conditions of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the Notice to Proceed (NTP) and shall be completed within **Two Hundred Seventy (270) calendar days** after issuance of NTP complete and ready for use.

5. Liquidated Damages.

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that liquidated damages shall be assessed for each calendar day the work remains incomplete.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, the Contractor does hereby agree, as a part consideration for the

awarding of this contract, to pay to the Owner the amount ***\$1,100.00 per calendar day*** not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default the time stipulated in the contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amounts shall be retained from time to time by the Owner from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due

- a) to any preference, priority or allocation order duly issued by the Owner.
- b) to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God or the public enemy, acts of the Owner, acts or another Contractor in the performance of a contract with the Owner fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; and
- c) to any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided further that the Contractor shall, within seven (7) calendar days from the beginning of delay, notify the Contracting Officer in writing of the causes of the delay who will ascertain the facts and extent of the delay and notify the Contractor within reasonable time of his decision in the matter.

Contractor must note that Guam by nature has frequent rainfall causing suspension of work. Said suspensions shall not qualify for time extensions unless the weather is unusually severe.

#### END OF SPECIAL PROVISIONS

## **GENERAL STATEMENT OF WORK**

### **I. OBJECTIVE:**

It is the primary objective of the Department of Public Works to provide design and construction services for the **“Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build), Project no.:470-5-1070-F-BAR”**.

### **II. PROJECT DESCRIPTION AND LOCATIONS:**

The scope of work for this project involves design and construction services for Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Facility located on Lot 14, Block F, Track 9 at Barrigada, Guam. This scope of has been prepared by DPW Engineers Jeri Calaor and Reynaldo Junio under the CIP Division. This scope of work is funded by Department of Interior, Office of Insular Affairs as well as in full compliance with all federal grant terms and conditions.

Any substantial change in the scope of work required shall be subject for review and approval by DOI, OIA in addition to DPW / DPHSS. All design and construction work must comply in accordance to all approving agency having jurisdiction and building code compliance of 2009.

### **III. PROJECT DESCRIPTION AND LOCATIONS:**

Community stakeholder input and engagement is an important component in any successful facility program. The individual or firm selected will work with Department of Public Works to develop a viable communication plan to align their expectation about this project and have all stakeholders engaged.

### **IV. GENERAL SCOPE OF SERVICES AND RESPONSIBILITIES:**

- A. The Contractor must be responsible for the complete design and construction of the project. The Contractor must visit the site and must be responsible for having ascertained pertinent conditions such as location, accessibility, general character of the site and the extent of existing condition within or adjacent to the site. No extra compensation will be made by reason of any misunderstanding or error as regards to the site, the condition thereof, accessibility or the amount of kind of work to be performed. All given figures/drawings are for general guidelines and for reference



only and shall be verified by the contractor before the preparation of bid.

- B. The Contractor shall provide all management, supervision, engineering, quality control, labor, equipment, materials and supplies necessary to perform a design-build for the DPHSS New Building Structure for Group Home for Foster Care Children including all engineering services incidental to the design and construction services.
- C. The Contractor shall be professionally responsible for the services performed under this contract. They should be responsive to all Government criteria, information, guidance, and review comments. All services shall be in full compliance with Federal and Local requirements.
- D. The Contractor shall provide architectural and engineering services for the different tasks described below and furnish the required reports, plans and specifications for the project. Plans shall be signed and approved by a Professional Engineer authorized to practice and perform work in Guam or the Marianas.
- E. The Contractor shall coordinate with DPW Engineer for all additional requirements as basis for the new design-build project.
- F. The Contractor shall coordinate their work with the agencies, local or federal, having jurisdiction in permit review and approval
- G. All work areas shall be kept clean. Those areas used by the contractor's employees shall be kept as clean as possible under any circumstances. No accumulation of debris will be allowed. Debris shall be disposed off-site daily and construction materials must be confined in an area designated by the Project Engineer.
- H. Under any circumstances, the contractor shall secure the construction area thoroughly protected and safe at the end of each working day.
- I. The Contractor shall submit work schedule and schedule of values prior to commencing any activity. Provide a construction schedule highlighting the major project milestone and specific completion of each activity.
- J. The Contractor shall submit maintenance and response schedules including names of responsible key personnel and contact numbers for easy access in case of any emergencies during the construction.

#### GENERAL STATEMENT OF WORK

Department of Public Health & Social Services  
New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

- K. The Contractor shall be responsible in upgrading the list submitted from time to time.
- L. All other items not detailed shall be assumed included to make the system work complete and ready for use
- M. All the entry permits in conjunction with the services shall be the responsibility of the contractor.
- N. All drawing, illustrations and pictures attached to the bid documents are for general guidelines and reference only for bidding and design. The Contractor shall submit drawing, product specifications and pictures for the approval of DPW Engineer and the using agency representative whenever applicable.

**V. SPECIFIC SCOPE OF WORK REQUIREMENTS**

The Design-Build project requires; one (1) story concrete building with combination of flat and pitch concrete roof proposed for Foster Care Home Building. The interior building area approximately 7,458 square foot (+/-) and to be constructed on Lot 14, Block "F", Tract 9, Municipality of Barrigada. The design should include Topographic survey, Civil, Architectural, Structural, Mechanical, Plumbing and Electrical Plans with Technical specifications conforming to all requirements of building permits. See attached preliminary design or reference drawing.

Design Requirements as follows;

- 1. Interview and Conference Room
- 2. Large Item Storage
- 3. Toilets
- 4. Lockers
- 5. Closets
- 6. Laundry Rooms
- 7. Office
- 8. Clothing & Personal Effects/ Issue Room
- 9. File Room
- 10. Baby Room
- 11. Child Playroom
- 12. Computer, Library/Study Room
- 13. Kitchen with Pantry

14. Boys Bathroom
15. Girls Bathroom
16. Boys Room
17. Girls Room
18. Isolation Room
19. Sports/Tool & Equipment Storage
20. Dining and Recreation Area
21. Hallways
22. Statue Platform
23. Mop Sink
24. Foyer
25. Porch
26. Porte Cochere
27. Fencing
28. Automated gate
29. Intercom system
30. Water tank with pump
31. Cabinetry
32. Landscaping
33. Shutters

**Note #1:** Collateral Equipment shall be considered during the preparation of PS&E. Awardee shall coordinate with DPW and DPHSS for additional collateral equipment during the development of PS&E. Collateral equipment shall include but not limited to the following;

1. Refrigerator
2. Chest Freezer
3. Electric Stove with Exhaust
4. Dishwasher
5. Washing Machine and Dryer
6. Air Conditioning Unit / Exhaust Fans

**Note #2:**

All given figures/drawings are for general guidelines and for reference only and shall be verified by the Awardee to comply with all the standards set forth by all agencies having jurisdiction local or federal. It is the responsibility of the Awardee to coordinate with all agencies having jurisdiction to satisfy the requirements of this IFB for the design and construction of a new Foster Care Home Building.

## **VI. DPR REQUIREMENTS:**

The proposed project site has no historic properties affected pursuant to Section 106 of 36 CFR 800. However the subject undertaking will be subject to 36 CFR 800.13 Post Review Discovery in the event of inadvertent discoveries.

## **VII. DoAg REQUIREMENTS:**

Division of Aquatic and Wildlife determined that the federally threatened Mariana fruit bat may occur within or near the proposed project sites and therefore, requires Contractor to maintain work hours between 7 a.m. and 5 p.m. This will minimize overlap between project work and periods of activity for this species.

## **VIII. TASK AND SUBMITTAL PHASE:**

### **TASK I. PRELIMINARY-Site Assessments and 60% Plans, Specifications & Estimates Submittal**

The Project involves those investigative and study requirements, which must be undertaken to adequately assess the existing condition of the site and form the basis of subsequent design activities to be in compliance with the International Building Code 2009 and all other agencies having jurisdictions. A 60% PS&E submittal is required.

### **TASK II. PRE-FINAL-90% Plans, Specifications and Estimates Submittal**

The Pre-Final Plans & Specifications shall be 100% complete incorporating all approved comments from preliminary Plans & Specifications. Two (2) copies of the following shall be submitted

1. Plans- complete plans, including title sheet, summary of quantities and schedules, details, cross sections, etc;
2. Technical Specifications- complete technical specifications to properly construct each item, of work including test procedures required, and any special conditions to be required.
3. Design analysis and computation sheets;

4. CPM schedule to establish project construction activities within the specified construction time.

Firm's key personnel shall participate in the resolution meeting to resolve all comments on the submittal. Prepare a "Minutes of Meetings" for approval and distribution by DPW.

### **TASK III. FINAL DESIGN SUBMITTAL**

After approval of the Pre-Final Plans & Specifications, submit five (5) copies for final review.

An electronic non-PDF workable file in AUTO CADD format, latest version, shall also be submitted in a separate disk for plans and specifications for each phase.

## **IX. COMMENCEMENT AND COMPLETION OF WORK:**

Design and Construction completion time is **Two Hundred Seventy (270) calendar days**.

### **A. Design Phase:**

1. The design period of this project is **sixty (60) calendar days** excluding government review and approval. DPW will issue Notice to Proceed (NTP) for the design of the project upon approval of Contract Agreement.
2. The Plans & Specifications be prepared in conformance with the standard format furnished by the Government.
3. Plan size shall be 24" x 36".
4. All plans and details shall be legible when reduced to one-half size plans (50% reduction). The minimum size of alphanumeric text on the reduced plans shall be 1/8".

### **5. Design Submittal Schedule:**

Task I (Preliminary)	60% Submittal (PS&E)	20 days after Notice to Proceed
Task II (Pre-final)	90 % Submittal (PS&E)	20 days after review & approval of Task I

#### **GENERAL STATEMENT OF WORK**

Department of Public Health & Social Services  
New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

Task III (Final)      100% Submittal (PS&E)      20 days after review & approval of Task II

**B. Construction Phase:**

The construction period of this project is **Two Hundred Ten (210) calendar days**. The Owner will issue a Notice to Proceed for construction upon approval of building permit.

**VII. SITE INVESTIGATION**

The Contractor shall verify existing site conditions and all pertinent information needed for the satisfactory performance of the scope of work.

**VIII. WARRANTY OF DESIGN AND CONSTRUCTION**

The Contractor warrants that the construction shall be performed in accordance with contract requirements for a period of one year. Design and construction works related not conforming to the contract requirements shall be corrected at no additional cost to the Government.

**IX. DESIGN CODES/GUIDES AND REFERENCES**

All services shall be performed in accordance with the general criteria contained in the following references.

- a. Building Law, Title XXXII, Government Code of Guam
- b. International Building Code (2009 Edition)
- c. International Mechanical Code (Latest Edition)
- d. International Plumbing Code (Latest Edition)
- e. National Electrical Code (NEC-Latest Edition)
- f. National Electrical Safety Code (NESC-Latest Edition)
- g. Life Safety Code (Latest Edition)
- h. International Fire Code (IFC-latest Edition)
- i. National Fire Protection Association Handbook (NFPA 70)
- j. Illuminating Engineering Society (IES)
- k. American Disability Act (ADA)
- l. GEPA, USEPA, CFR29
- m. Guam Energy Code
- n. U.S. Army Corps of Engineer

**GENERAL STATEMENT OF WORK**

Department of Public Health & Social Services  
New Building Structure for  
Group Home for Foster Care Children (Design-Build)  
Project no.: 470-5-1070-F-BAR

- o. All other codes, regulations, technical publications and design manuals applicable in the performance of this project.

**X. GOVERNMENT REVIEWING AND APPROVING AGENCIES:**

- 1. Department of Public Works
- 2. Guam Environmental Protection Agency
- 3. Department of Land Management
- 4. Guam Power Authority
- 5. Guam Fire Department
- 6. Guam Waterworks Authority
- 7. Guam Historic Preservation
- 8. U.S. Army Corps of Engineer

**XI. DISPOSAL:**

- 1. Must coordinate with DPW Engineer prior to any disposal activity.
- 2. Removal and disposal fee shall be paid by the contractor.

**END OF GENERAL STATEMENT OF WORK**

**Prevailing Wage Rates for Temporary Alien Employment Certification Government of Guam EFFECTIVE SEPTEMBER 29, 2008**

OCCUPATION	HOURLY
Bricklayer	\$14.02
Carpenter	\$14.20
Cement Mason	\$14.33
Construction Equipment Mechanic	\$14.14
Cook, CAMP	\$11.85
Construction Helper	\$9.34
Construction Labor	\$8.50
Electrician	\$18.83
Heating Air conditioning & Refrigeration Mechanic	\$15.76
Heavy Equipment Mechanic	\$17.63
Heavy Equipment Operator	\$15.40
Iron Worker	\$13.62
Painter	\$14.33
Pipe Fitter	\$17.41
Plasterer	\$15.24
Plumber	\$17.41
Refrigeration Mechanic	\$16.76
Roofer	\$10.96
Sheet-Metal Worker	\$15.21
Surveyor Helper	\$10.74
Truck Driver	\$15.98



Welder	\$17.92
Warehouseman	\$12.00

## PREVAILING WAGE RATE FOR TEMPORARY ALIEN

N40192-16-R-2800  
Attachment 2

EDDIE BAZA CALVO  
Governor



RAY TENORIO  
Commissioner

*Office of the Governor of Guam*

### COMMON CONSTRUCTION PREVAILING WAGE RATES FOR GUAM

Pursuant to 8 CFR 214.2(h)(6)(v)(F)(2), U.S. Citizenship and Immigration Services (USCIS) must approve specific wage data and prevailing wage rates used for construction occupations on Guam. The following prevailing wage rates apply only to H-2B workers and similarly employed U.S. workers on Guam. USCIS has reviewed the Government of Guam's proposed rates and has approved the adjusted rates. These rates shall be effective for Temporary Labor Certification applications filed on or after Tuesday February 16, 2016.

<u>OCCUPATION</u>	<u>HOURLY WAGE RATES</u>
CAMP COOK	\$10.54
CARPENTER	\$14.20
CEMENT MASON	\$14.33
ELECTRICIAN	\$18.83
HVAC and REFRIGERATION MECHANICS	\$18.76
CONSTRUCTION EQUIPMENT MECHANIC	\$17.63
HEAVY EQUIPMENT OPERATOR	\$15.40
REINFORCING METAL WORKER	\$13.62
PAINTER	\$14.33
PIPEFITTER	\$17.41
PLASTERER	\$15.24
PLUMBER	\$17.41
SHEET METAL WORKER	\$15.92
STRUCTURAL STEEL WORKER	\$13.34
WELDER	\$17.92

These prevailing wage rates are effective for both new and extension temporary labor certifications. The prevailing wage rate on applications approved prior to the implementation of these new rates shall remain in effect for the duration of the existing labor certifications.

For further information, please contact Maria Connelley, Director of Labor, at (671) 475-7075, or Greg Massey, Administrator for the Alien Labor Processing & Certification Division (ALPCD) at (671) 475-8005.

EDDIE BAZA CALVO  
Governor of Guam

FEB 18 2016

Ricardo J. Honda, Governor's Complex • Agaña, Guam 96910  
Tel: (671) 472-8000 • Fax: (671) 473-4876 • [www.gouv.gu](http://www.gouv.gu)

**WD 05-2147 (Rev.-20**

**) was first posted on www.wdol.gov on 01/03/2017**

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**REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT**

By direction of the Secretary of Labor

**U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON D.C. 20210**

Daniel W. Sims  
Director

Division of  
Wage Determinations

Wage Determination No.: 2005-2147  
Revision No.: 20  
Date Of Revision: 12/30/2016

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Service Contract Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

States: Guam, Northern Marianas, Wake Island

Area: Guam Statewide  
Northern Marianas Statewide  
Wake Island Statewide

**\*\*Fringe Benefits Required Follow the Occupational Listing\*\***

<b>OCCUPATION CODE</b>	<b>TITLE</b>	<b>FOOTNOTE</b>	<b>RATE</b>
<b>01000 - Administrative Support and Clerical Occupations</b>			
01011	Accounting Clerk I		12.50
01012	Accounting Clerk II		13.53
01013	Accounting Clerk III		15.59
01020	Administrative Assistant		17.67
01040	Court Reporter		15.38
01051	Data Entry Operator I		10.48
01052	Data Entry Operator II		11.99
01060	Dispatcher, Motor Vehicle		13.06
01070	Document Preparation Clerk		12.25
01090	Duplicating Machine Operator		12.25
01111	General Clerk		10.29
01112	General Clerk II		11.28
01113	General Clerk III		12.32
01120	Housing Referral Assistant		17.15
01141	Messenger Courier		10.12
01191	Order Clerk I		11.23
01192	Order Clerk II		12.25
01261	Personnel Assistant (Employment) I		14.33
01262	Personnel Assistant (Employment) II		14.90
01263	Personnel Assistant (Employment) III		16.48
01270	Production Control Clerk		18.34
01280	Receptionist		9.67
01290	Rental Clerk		11.10

01300 - Scheduler, Maintenance	13.75
01311 - Secretary I	13.75
01312 - Secretary II	15.38
01313 - Secretary III	17.15
01320 - Service Order Dispatcher	11.57
01410 - Supply Technician	17.67
01420 - Survey Worker	15.26
01531 - Travel Clerk I	11.61
01532 - Travel Clerk II	12.57
01533 - Travel Clerk III	13.44
01611 - Word Processor I	12.25
01612 - Word Processor II	13.75
01613 - Word Processor III	15.38
<b>05000 - Automotive Service Occupations</b>	
05005 - Automobile Body Repairer, Fiberglass	13.34
05010 - Automotive Electrician	13.06
05040 - Automotive Glass Installer	12.10
05070 - Automotive Worker	12.10
05110 - Mobile Equipment Servicer	8.59
05130 - Motor Equipment Metal Mechanic	13.06
05160 - Motor Equipment Metal Worker	12.10
05190 - Motor Vehicle Mechanic	13.06
05220 - Motor Vehicle Mechanic Helper	10.12
05250 - Motor Vehicle Upholstery Worker	12.10
05280 - Motor Vehicle Wrecker	12.10
05310 - Painter, Automotive	12.37
05340 - Radiator Repair Specialist	12.10
05370 - Tire Repairer	7.81
05400 - Transmission Repair Specialist	12.10
<b>07000 - Food Preparation And Service Occupations</b>	
07010 - Baker	10.47
07041 - Cook I	9.54
07042 - Cook II	11.78
07070 - Dishwasher	7.25
07130 - Food Service Worker	7.78
07210 - Meat Cutter	11.86
07260 - Waiter/Waitress	7.59
<b>09000 - Furniture Maintenance And Repair Occupations</b>	
09010 - Electrostatic Spray Painter	14.38
09040 - Furniture Handler	8.85
09080 - Furniture Refinisher	14.38
09090 - Furniture Refinisher Helper	10.66
09110 - Furniture Repairer, Minor	12.51
09130 - Upholsterer	14.38
<b>11000 - General Services And Support Occupations</b>	
11030 - Cleaner, Vehicles	8.23
11060 - Elevator Operator	8.23
11090 - Gardener	10.99
11122 - Housekeeping Aide	8.33
11150 - Janitor	8.23
11210 - Laborer, Grounds Maintenance	9.14
11240 - Maid or Houseman	7.25
11260 - Pruner	8.23
11270 - Tractor Operator	10.33
11330 - Trail Maintenance Worker	9.14
11360 - Window Cleaner	9.14

**12000 - Health Occupations**

12010 - Ambulance Driver	15.81
12011 - Breath Alcohol Technician	15.81
12012 - Certified Occupational Therapist Assistant	21.70
12015 - Certified Physical Therapist Assistant	21.70
12020 - Dental Assistant	13.20
12025 - Dental Hygienist	29.85
12030 - EKG Technician	23.96
12035 - Electroneurodiagnostic Technologist	23.96
12040 - Emergency Medical Technician	15.81
12071 - Licensed Practical Nurse I	14.14
12072 - Licensed Practical Nurse II	15.81
12073 - Licensed Practical Nurse III	17.63
12100 - Medical Assistant	11.54
12130 - Medical Laboratory Technician	14.14
12160 - Medical Record Clerk	11.82
12190 - Medical Record Technician	13.59
12195 - Medical Transcriptionist	14.14
12210 - Nuclear Medicine Technologist	34.75
12221 - Nursing Assistant I	10.03
12222 - Nursing Assistant II	11.30
12223 - Nursing Assistant III	12.31
12224 - Nursing Assistant IV	13.84
12235 - Optical Dispenser	15.81
12236 - Optical Technician	14.14
12250 - Pharmacy Technician	13.41
12280 - Phlebotomist	13.84
12305 - Radiologic Technologist	22.64
12311 - Registered Nurse I	20.70
12312 - Registered Nurse II	25.32
12313 - Registered Nurse II, Specialist	25.32
12314 - Registered Nurse III	30.64
12315 - Registered Nurse III, Anesthetist	30.64
12316 - Registered Nurse IV	36.72
12317 - Scheduler (Drug and Alcohol Testing)	19.59

**13000 - Information And Arts Occupations**

13011 - Exhibits Specialist I	15.06
13012 - Exhibits Specialist II	18.66
13013 - Exhibits Specialist III	22.83
13041 - Illustrator I	15.06
13042 - Illustrator II	18.66
13043 - Illustrator III	22.83
13047 - Librarian	20.66
13050 - Library Aide/Clerk	12.00
13054 - Library Information Technology Systems Administrator	18.66
13058 - Library Technician	15.06
13061 - Media Specialist I	13.46
13062 - Media Specialist II	15.06
13063 - Media Specialist III	16.80
13071 - Photographer I	12.82
13072 - Photographer II	14.32
13073 - Photographer III	17.75
13074 - Photographer IV	21.73
13075 - Photographer V	26.30

13110 - Video Teleconference Technician	12.91
<b>14000 - Information Technology Occupations</b>	
14041 - Computer Operator I	13.65
14042 - Computer Operator II	15.76
14043 - Computer Operator III	17.56
14044 - Computer Operator IV	19.50
14045 - Computer Operator V	21.81
14071 - Computer Programmer I	(see 1) 15.73
14072 - Computer Programmer II	(see 1) 19.50
14073 - Computer Programmer III	(see 1) 23.84
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1) 24.23
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	13.65
14160 - Personal Computer Support Technician	19.50
<b>15000 - Instructional Occupations</b>	
15010 - Aircrew Training Devices Instructor (Non-Rated)	24.23
15020 - Aircrew Training Devices Instructor (Rated)	29.32
15030 - Air Crew Training Devices Instructor (Pilot)	33.30
15050 - Computer Based Training Specialist / Instructor	24.23
15060 - Educational Technologist	22.82
15070 - Flight Instructor (Pilot)	33.30
15080 - Graphic Artist	20.47
15090 - Technical Instructor	17.65
15095 - Technical Instructor/Course Developer	21.58
15110 - Test Proctor	13.87
15120 - Tutor	13.87
<b>16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations</b>	
16010 - Assembler	8.08
16030 - Counter Attendant	8.08
16040 - Dry Cleaner	9.34
16070 - Finisher, Flatwork, Machine	8.08
16090 - Presser, Hand	8.08
16110 - Presser, Machine, Drycleaning	8.08
16130 - Presser, Machine, Shirts	8.08
16160 - Presser, Machine, Wearing Apparel, Laundry	8.08
16190 - Sewing Machine Operator	9.86
16220 - Tailor	10.33
16250 - Washer, Machine	8.46
<b>19000 - Machine Tool Operation And Repair Occupations</b>	
19010 - Machine-Tool Operator (Tool Room)	14.49
19040 - Tool And Die Maker	18.20
<b>21000 - Materials Handling And Packing Occupations</b>	
21020 - Forklift Operator	12.49
21030 - Material Coordinator	18.34
21040 - Material Expediter	18.34
21050 - Material Handling Laborer	10.65
21071 - Order Filler	9.66
21080 - Production Line Worker (Food Processing)	12.49
21110 - Shipping Packer	13.33
21130 - Shipping/Receiving Clerk	13.33
21140 - Store Worker I	13.23
21150 - Stock Clerk	18.58
21210 - Tools And Parts Attendant	12.49

21410 - Warehouse Specialist	12.49
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**23000 - Mechanics And Maintenance And Repair Occupations**

23010 - Aerospace Structural Welder	20.69
23021 - Aircraft Mechanic I	19.70
23022 - Aircraft Mechanic II	20.69
23023 - Aircraft Mechanic III	21.74
23040 - Aircraft Mechanic Helper	13.70
23050 - Aircraft, Painter	18.50
23060 - Aircraft Servicer	16.09
23080 - Aircraft Worker	17.38
23110 - Appliance Mechanic	14.49
23120 - Bicycle Repairer	9.74
23125 - Cable Splicer	15.43
23130 - Carpenter, Maintenance	13.00
23140 - Carpet Layer	13.55
23160 - Electrician, Maintenance	14.99
23181 - Electronics Technician Maintenance I	14.72
23182 - Electronics Technician Maintenance II	15.05
23183 - Electronics Technician Maintenance III	18.31
23260 - Fabric Worker	12.60
23290 - Fire Alarm System Mechanic	15.43
23310 - Fire Extinguisher Repairer	11.67
23311 - Fuel Distribution System Mechanic	15.43
23312 - Fuel Distribution System Operator	13.01
23370 - General Maintenance Worker	11.95
23380 - Ground Support Equipment Mechanic	19.70
23381 - Ground Support Equipment Servicer	16.09
23382 - Ground Support Equipment Worker	17.38
23391 - Gunsmith I	11.67
23392 - Gunsmith II	13.55
23393 - Gunsmith III	15.43
23410 - Heating, Ventilation And Air-Conditioning Mechanic	15.76
23411 - Heating, Ventilation And Air Conditioning Mechanic (Research Facility)	16.55
23430 - Heavy Equipment Mechanic	15.15
23440 - Heavy Equipment Operator	13.73
23460 - Instrument Mechanic	15.43
23465 - Laboratory/Shelter Mechanic	14.49
23470 - Laborer	10.65
23510 - Locksmith	14.49
23530 - Machinery Maintenance Mechanic	17.38
23550 - Machinist, Maintenance	15.43
23580 - Maintenance Trades Helper	9.92
23591 - Metrology Technician I	15.43
23592 - Metrology Technician II	16.41
23593 - Metrology Technician III	17.37
23640 - Millwright	15.43
23710 - Office Appliance Repairer	14.38
23760 - Painter, Maintenance	13.55
23790 - Pipefitter, Maintenance	15.32
23810 - Plumber, Maintenance	14.38
23820 - Pneudraulic Systems Mechanic	15.43
23850 - Rigger	15.43
23870 - Scale Mechanic	13.55
23890 - Sheet-Metal Worker, Maintenance	15.21
23910 - Small Engine Mechanic	13.55

23931 - Telecommunications Mechanic I	19.01
23932 - Telecommunications Mechanic II	19.76
23950 - Telephone Lineman	18.24
23960 - Welder, Combination, Maintenance	14.66
23965 - Well Driller	15.43
23970 - Woodcraft Worker	15.43
23980 - Woodworker	11.67
<b>24000 - Personal Needs Occupations</b>	
24570 - Child Care Attendant	10.09
24580 - Child Care Center Clerk	12.58
24610 - Chore Aide	12.43
24620 - Family Readiness And Support Services Coordinator	12.44
24630 - Homemaker	16.12
<b>25000 - Plant And System Operations Occupations</b>	
25010 - Boiler Tender	15.43
25040 - Sewage Plant Operator	14.49
25070 - Stationary Engineer	15.43
25190 - Ventilation Equipment Tender	10.73
25210 - Water Treatment Plant Operator	14.49
<b>27000 - Protective Service Occupations</b>	
27004 - Alarm Monitor	10.90
27007 - Baggage Inspector	7.35
27008 - Corrections Officer	12.05
27010 - Court Security Officer	12.05
27030 - Detection Dog Handler	10.90
27040 - Detention Officer	12.05
27070 - Firefighter	12.05
27101 - Guard I	7.37
27102 - Guard II	10.90
27131 - Police Officer I	12.05
27132 - Police Officer II	13.40
<b>28000 - Recreation Occupations</b>	
28041 - Carnival Equipment Operator	9.53
28042 - Carnival Equipment Repairer	10.08
28043 - Carnival Equipment Worker	7.78
28210 - Gate Attendant/Gate Tender	13.18
28310 - Lifeguard	11.01
28350 - Park Attendant (Aide)	14.74
28510 - Recreation Aide/Health Facility Attendant	10.76
28515 - Recreation Specialist	18.26
28630 - Sports Official	11.74
28690 - Swimming Pool Operator	17.71
<b>29000 - Stevedoring/Longshoremen Occupational Services</b>	
29010 - Blocker And Bracer	15.20
29020 - Hatch Tender	15.20
29030 - Line Handler	15.20
29041 - Stevedore I	14.22
29042 - Stevedore II	16.25
<b>30000 - Technical Occupations</b>	
30010 - Air Traffic Control Specialist, Center (HFO)	(see 2) 35.77
30011 - Air Traffic Control Specialist, Station (HFO)	(see 2) 24.66
30012 - Air Traffic Control Specialist, Terminal (HFO)	(see 2) 27.16
30021 - Archeological Technician I	17.49
30022 - Archeological Technician II	19.56
30023 - Archeological Technician III	24.21
30030 - Cartographic Technician	23.18



30040 - Civil Engineering Technician	21.93
30061 - Drafter/CAD Operator I	17.49
30062 - Drafter/CAD Operator II	19.56
30063 - Drafter/CAD Operator III	20.74
30064 - Drafter/CAD Operator IV	24.21
30081 - Engineering Technician I	14.62
30082 - Engineering Technician II	16.41
30083 - Engineering Technician III	18.36
30084 - Engineering Technician IV	22.34
30085 - Engineering Technician V	27.83
30086 - Engineering Technician VI	33.66
30090 - Environmental Technician	21.10
30210 - Laboratory Technician	20.74
30240 - Mathematical Technician	23.34
30361 - Paralegal/Legal Assistant I	19.06
30362 - Paralegal/Legal Assistant II	21.53
30363 - Paralegal/Legal Assistant III	26.35
30364 - Paralegal/Legal Assistant IV	30.80
30390 - Photo-Optics Technician	21.93
30461 - Technical Writer I	22.17
30462 - Technical Writer II	27.10
30463 - Technical Writer III	32.79
30491 - Unexploded Ordnance (UXO) Technician I	22.74
30492 - Unexploded Ordnance (UXO) Technician II	27.51
30493 - Unexploded Ordnance (UXO) Technician III	32.97
30494 - Unexploded (UXO) Safety Escort	22.74
30495 - Unexploded (UXO) Sweep Personnel	22.74
30620 - Weather Observer, Combined Upper Air Or Surface Programs	(see 2) 20.74
30621 - Weather Observer, Senior	(see 2) 23.00
<b>31000 - Transportation/Mobile Equipment Operation Occupations</b>	
31020 - Bus Aide	8.15
31030 - Bus Driver	9.69
31043 - Driver Courier	8.97
31260 - Parking and Lot Attendant	7.25
31290 - Shuttle Bus Driver	9.99
31310 - Taxi Driver	8.21
31361 - Truckdriver, Light	8.97
31362 - Truckdriver, Medium	11.61
31363 - Truckdriver,	12.48
<b>99000 - Miscellaneous Occupations</b>	
99030 - Cashier	7.46
99050 - Desk Clerk	9.70
99095 - Embalmer	22.74
99251 - Laboratory Animal Caretaker I	16.24
99252 - Laboratory Animal Caretaker II	17.04
99310 - Mortician	22.74
99410 - Pest Controller	13.28
99510 - Photofinishing Worker	11.95
99710 - Recycling Laborer	10.76
99711 - Recycling Specialist	16.27
99730 - Refuse Collector	10.24
99810 - Sales Clerk	8.95
99820 - School Crossing Guard	15.03
99830 - Survey Party Chief	20.30
99831 - Surveying Aide	11.54
99832 - Surveying Technician	15.00

99840 - Vending Machine Attendant	20.19
99841 - Vending Machine Repairer	23.57
99842 - Vending Machine Repairer Helper	20.19

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**ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:**

**HEALTH & WELFARE:** \$4.02 per hour or \$160.80 per week or \$696.79 per month

**VACATION:** 2 weeks paid vacation after 1 year of service with a contractor or successor; and 4 weeks after 3 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

**HOLIDAYS:** A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174).

**THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:**

1) **COMPUTER EMPLOYEES:** Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541. 400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

- (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- (2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- (3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- (4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) **AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY:** If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

**HAZARDOUS PAY DIFFERENTIAL:** An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordinance, explosives, and

incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**\*\* UNIFORM ALLOWANCE \*\***

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A links to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

**REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}**

**Conformance Process:**

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed. The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed

## DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA1273 format and FHWA program requirements.

### "(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### (3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics

working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.



(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.



(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(11) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(12) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (11) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (11) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (11) of this section.

(13) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (12) of this section.

(14) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (11) through (14) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (11) through (14) of this section.

(15) Records. The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job."

**ATTACHMENT -A15**

**ACKNOWLEDGEMENT OF RECEIPT FORM**

**DEPARTMENT OF PUBLIC WORKS**

**Please acknowledge receipt of:**

**INVITATION FOR BID (MULTI-STEP)**

**Project Name:** Department of Public Health & Social Services New Building  
Structure for Group Home for Foster Care Children (Design-Build)

**Project No.** 470-5-1070-F-BAR

**Name of Prospective Offeror** \_\_\_\_\_

**Name of person receiving IFB** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Time** \_\_\_\_\_

**Contact Person regarding IFB** \_\_\_\_\_

**Company/Firm** \_\_\_\_\_

**Title** \_\_\_\_\_

**E-mail Address** \_\_\_\_\_

**Contact Number** \_\_\_\_\_

**Fax Number** \_\_\_\_\_

**Address** \_\_\_\_\_

\_\_\_\_\_